(1)

Supreme Court, U.S.
FILED

02 647 OCT 7 2002

OFFICE OF THE CLERK

RECORD

IN THE
SUPREME COURT OF THE
UNITED STATES

****

ELDER LEWIS BANKS
PETITIONER,

v.

JEFFERSON SMURFIT CROP.
RESPONDENT,

ON THE PETITION FOR A WRIT CERTIORARI
FROM THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT CERTIORARI

****

ELDER LEWIS BANKS
PETITIONER
3204 ANVIL PLACE
GREENSBORO, NC 27407
(336) 852-1684

1458

QUESTION PRESTENTED

1. Whether the Petitioner, with his Exhibits and Affidavits presented as evidences proved to the court that the Petitioner did in fact presented this case with issue of the Matter of Law for summary judgment for the Petitioner.

2. Whether the evidence presented a sufficient disagreement to require submission to a jury?

3. Whether Middle District Court and the Appellate Court over looked the evidence that supported the Petitioner's proof of Intentionally violated the Petitioner Civil Rights Act under Title VII. 1964 of 42 U.S.C. § 2000e. et. Seq.?

4. Whether the Petitioner's Constitutional Rights of the First Amendments of Freedom of Speech and Religion also under 42 U.S.C. § 1981 were deprived?

5. Whether the Petitioner in this case prove a Prima Facis with intent, concerning the 2nd elements when an employee is terminated under Disparate Treatment, and did in fact showed the court that his performance had nothing to do with the Petitioner termination.

6. Whether the Petitioner prove to the court, that the Respondent was not in a 24 hours continuous Operation mode that was defined in the union's contract?

7. Whether the Respondent did not produce any material facts, can a Judge make a ruling on a

summary judgment case in favor of that party without material facts?

8. Whether the Supreme Court ruling still stands, concerning that in a prima facie cases, the parties would have to prove is: 1) a prima facie case of discrimination; and, 2) that the employer's proffered non-discriminatory reason for his discharge is false?

9. Whether the Petitioner prove that the Respondents proffered nondiscrimination explanation for its adverse action dated Jan.27, 1998 was false?

LIST OF PARTIES

[*] All parties do not appear in the caption of the case on the cover page. A list of parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Fred T. Hamlet
Attorney for Defendant
North Carolina State Bar No. 07772
First Union Tower – Suit 1870
300 North Greene Street
Greensboro, NC 27401
[336] 378-9751

TABLE OF CONTENTS

1. QUESTION PRESENTED.....i
2. LIST OF PARTIES.....iii
3. TABLE OF CONTENTS AND INDEX OF APPENDIX.....iv
4. TABLE OF AUTHORITIES CITED.....v
5. OPINION BELOW.....1
6. JURISDICTION.....1
7. CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....2
8. STATEMENT OF THE CASE.....3
9. REASON FOR GRANTING THE WRIT.....29
10. CONCLUSION.....30
11. APPENDIX.....App. i

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

George Moyer v.
Smurfit-Stone 1:00-CV-00581.....4

Elder Lewis Banks v.
Jefferson Smurfit Corp, 1:00CV00144.....13

Ennis v. Nat'lAss'n of
Bus. & Educ. Radio,
53 F.3d 55, 58 (4th Cir. 1995.....19,27

Marshall v. American Hospital Assoc.,
157 F.3d 520 (7th Cir. 1998.....19

Theard v. Glaxo, Inc.,
47 F.3d 676, 680 (4th Cir. 1995).....19

Atkins v. Board of School
Commissioners of the City of Indianapolis,
830 F.Supp. 1169 (S.D.Ind. 1993),.....19,28

Gilty v. Village of Oak Park,
919 F.2d 1247, 1250 (7th Cir. 1990).....20

Plair v. E.J. Brach & Sons, Inc.
105 F.3d 343, 347 (7th Cir. 1997),.....20

Denison v. Swaco Geolograph Company
10th Cir. 1991) 941 F.2d 1416, 1420.....21

LaMontagne v. American
Convenience Prods., Inc
[7th Cir. 1984) 750 F.2d 1405, 1413-14,.....21

Helm. v. West Maryland Ry. Co.
C.A.4th 1988, 838, F.2d 729, 734.....24

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.
475 U.S. 574, 586-87 (1986.....25

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 247-48 (1986.....25

Smith v. University of North Carolina,
C.A. 4th, 1980, 632 F.2d 316, 338.....25

Thornbrough v. Columbus & Greenville RR Co.
C.A. 5th, 1985, 760 F. 2d 633, 640.....25

Charbonnages de France v. Smith,
C.A. 4th, 1979, 597, F.2d 406, 414.....25

McKinney v. Bd. of Trustees,
955 F.2d 924, 928 (4th Cir. 1992).....26

Matsushita Elec.v. Indus. Co.
475 U.S. at 587-88;.....26

Providence Square Assoc., L.L.C. v. G.D.F., Inc.,
211 F.3d 846, 850 (4th Cir. 2000).....26

Boazman v. Economics Lab Inc,
C.A.5th 1976, 537, F.2d 210.....26

St. Mary's Honor Center v. Hicks,
509 U.S. 502 (1993).....27,29

Marshall v. American Hospital Assoc.,
157 F.3d 520 (7th Cir. 1998). 27

Theard v. Glaxo, Inc. ,
47 F.3d 676, 680 (4th Cir. 1995).....27

Texas Dept. of Community Affairs v. Burdine,
450 U.S. 257 101 S.Ct. 1089 (1981).....28

Williams v. Cerberonics, Inc.,
871 F.2d 452, 455 (4th Cir. 1989).....28

Reeve v. Sanderson Plumbing Products, Inc.,
(99-536) 197 F.3d 688, reversed 2000.....29

STATUTES AND RULES

Civil Rights Act of Title VII of 1964,
42 USC § 2000e. et. Seq.....1,5

42 USC § 1981,.....1,9

28 USC § 2716,.....24

Rule 56(c),.....24

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT CERTIORARI

Petitioner respectfully prays that a writ of certiorari Issue to review the judgment below.

OPINION BELOW

[*] For cases from **federal court:**

The opinion of the United States court of appeals appears at Appendix **A** to the petition and is unpublished.

The Opinion of the United States District Court appears at Appendix **B** to the petition and is unpublished.

JURISDICTION

On August 25, 2000, Petitioner Elder Lewis Banks filed this action pro se under Title VII of the Act known as "The Civil Rights Act of 1964, 42 USC section 2000e. et. Seq. race discrimination and retaliation. The Jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by Title VII of the Act known as "The Civil Rights Act of 1964, 42 USC section 2000e. et. Seq providing for injunctive and other relief against racial discrimination in employment against the Defendant-Respondent, Jefferson Smurfit Corp., this suit also authorized under Title 42 USC section 1981 and the United States Constitution more particularly the Fifth and Fourteenth Amendments thereto.

This case was placed on the Master Calendar of the Middle District of North Carolina, Greensboro. Trial date was set for January 7, 2002. The parties completed their Discovery and Settlement Conference was set for December 20, 2001. On Dec. 18, 2001, the courts rule Summary Judgment for the Defendant. The Plaintiff filed an Appeal with the U.S. Court of Appeals for the Fourth

Circuit on January 7, 2002. On March 30, 2002, was submitted to the Appellate Court and was decided June 6, 2002. Filed a Petitioner Rehearing and Rehearing en banc, was denied July 19, 2002. Was issued a Mandate July 29, 2002. The Defendant did not present any evidence to support a judgment to be ruled in their favor.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLED

The First, Fifth, Seventh and Fourteenth Amendment to the United States Constitution provides, in relevant part:

First...Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: or abridging for freedom of speech, or of the press: or the right of the people peaceable to assemble, and to petition the government for a redress of grievances.

Fifth... Nor state shall ... deprive any person of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Seventh....In suit at common law, where in controversy shall exceed twenty dollars, the right of trail by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, then according to the rules of the common law.

Fourteenth ... Nor State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

In December 1997, Jefferson Smurfit here on out (Respondent) hired Kevin Wells (white male) from the outside to come in and do the job of a second pressman IP3. [1]The Respondent already had eight (8) 2nd pressman IP2 that could have filled that position, but all of them were black employees [**Appendix C**].

The Respondent assigned employees who they over looked to help train Mr. Wells in becoming a 2nd pressman IP3. Management even asked the Petitioner to help train Mr. Wells. In fact Respondent has two location here in Greensboro, NC. one on Norwalk St. and East Market St.

Mr. Wells was terminated from the Plant on Norwalk St. for fighting another employee of the name of Mr. Jimmy Emerson (Black African American Male). Mr. Emerson was terminated, but Mr. Wells was rehired at the other plant on East Market St.

In fact Mr. Shaney Sufferns, (Black Employee) worked for the Respondent on Norwalk St. who been with the company for over Ten (10) years and was there at the time when Mr. Wells was employed at the Norwalk St., plant. Mr. Sufferns stated that Mr. Wells never worked on the press as a 2nd pressman or press operator see [**App. D,**].

The Petitioner filed a grievance against the Respondent for not posting the position since the company needed another 2nd pressman IP3. The Respondent made statements that Mr. Wells had experience as a 2nd pressman IP3. That was not the case see [**App. E],** Affidavit of Mr. John Means Jr.

---

[1] In the Plaintiff's complaint filed dated August. 25, 2000, see {**Appendix c**} is a list of Black Employees that could have handle the job of 2nd pressman IP3.

Also **[App. F]**, affidavit of [2]Mr. George E. Moyer. After the Petitioner filed that grievance dated Jan. 5, 1998, the Respondent supervisors came after the Petitioner one by one with what every it took to finished the job to stop the Petitioner grievance for going any farther see **[App. G]**.

The Respondent did in fact terminate the Petitioner, with a charge that two others white employees were charge with but were not discharged from the company. The Petitioner filed a charge with EEOC on Feb. 5, 1998, and on Dec 8, 1999, found the Respondent in violation of my Civil Rights see **[App H]**

After terminated Elder Lewis Banks, my grievance stopped it was no need for the union to continue with that grievance that I filed Jan. 5, 1998. When Respondent held a meeting on Jan. 22, 1998, the Petitioner asked the Plant Manager Mr. Randy Hearns, for the time calling log.

[3]The Petitioner did in fact asked Mr. Hearns about the log sheet, and the time my replacement had called in. The Petitioner told Mr. Hearns, that the supervisors Mark Grubbs, and Leonard Ludswaki allowed the Petitioner to leave just to write him up on those charges of walking off the job. This was done Intentionally.

On January 5, 1998, the Petitioner filed a grievance against the Respondent, for hiring Kevin Wells (white male) from the outside to come in while the company had eight to nine Black African American

---

[2] Mr. Moyer filed a complaint with the Federal Court of Middle District here in Greensboro, NC. Case number 1:00-CV-00581 dated June 14, 2000, will show a pattern in JS conduct of race discrimination see and Affidavit [App. F].

[3]. The Petitioner did in fact asked the Respondent on Jan. 22, 1998, Feb. 4 meeting, and also asked the General Manager Jim Seels in the March meeting asked the same question but got no answer to the question.

BEST AVAILABLE COPY

employees that could have filled that higher paying position. The only thing that the Respondent didn't have was a white person next in line.

The company has a contract agreement with Graphic Communications Local 465-S, with that agreement it states that the company must post for bid for a period of forty-eight (48) hours, Monday through Friday. "In a line of progression, or in a job classification not in a line of progression, such jobs shall be posted". See **[App. I]** Also a copy of the Departments that or progressions Material Fact.

The Respondent retaliated after the Petitioner filed a grievance opposing a practice that the company was making and that was an unlawful employment practice. It shall be unlawful employment practice for an employer to Discriminate against any of its employees. The Respondent reason was a pretext one, of not posting the position.

Within ten (10) days the Petitioner was place on suspension and seven (7) days later the Petitioner was terminated due to *42 USC § 2000e et. Seq.* The Petitioner then filed a charge with the Equal Employment Opportunity Commission (EEOC) concerning the Respondent terminating the Petitioner for something that two (2) white employees was also charged with.

The Respondent gave them minor punishment, but for the Petitioner the Respondent terminated **[App. J].** The EEOC had issued the Petitioner a letter of Right To Sue Letter with cause dated December 8, 1999, and found the Respondent in violation of the Petitioner Civil Rights Act of 1964, with Disparate Treatment.

After Respondent found out the facts and did nothing to correct it, my discharge was not retracted due to my race, which is a Black African American. On Jan. 27, 1998 the Petitioner was terminated see **[App. K]**. and on the same day the Petitioner filed another grievance Retaliation.

And how Mr. Hearns, stated he would call the Petitioner to inform him of his finding the Petitioner never receive that call. When the Petitioner found out

that he was terminated the Petitioner had to return his uniform to pick up his last paycheck. Mr. Wells was hired at the E. Market plant with the company's uniform on, but he was terminated.

When ever the Respondent terminates one of its employees with the company's uniform they must return it to receive their last paycheck. I filed another Grievance dated Jan. 29, 1998 on Discrimination with Disparate Treatment, **[App. L.]** and that is the same charge that the Petitioner filed with EEOC.

On Feb. 4, 1998 the Petitioner filled out a Questionnaire and an Affidavit to expedite the process of filling my claim with the EEOC here in Greensboro, NC. Which was a timely charge. Also on Feb. 4, 1998, the Respondent, the union committee, and the Petitioner had a meeting concerning the Petitioner termination.

The plant manager Mr. Hearns talked about walking off the job, but I asked him did anybody check the time call in log. There was no response to that question. The Petitioner's Grievance was about the two white employees that the Respondent said they had violated the same thing that the Petitioner was charged with, but in their case were not terminated.

On Feb. 6 1998, the company stated that they gave the Petitioner a verbal warning about walking off the job. The Petitioner was denied. In Feb. 1998, the Petitioner filed for his unemployment benefits with the Employment Security Commission, here on out ESC. The Respondent responded by stating that they gave the Petitioner a verbal warning and the Petitioner left work without being properly relieved. **[App. M].**

On March 2, 1998, the union and the Petitioner had another meeting with the Respondent and in this meeting the Petitioner brought up again about the call in log sheet. The Petitioner asked Mr. Seels the general manager, "Did anyone check the time call-in sheet to see what time my replacement had called in"? Mr. Seels stated "It is up stairs somewhere".

Mr. Seels never told the Petitioner nor committee the time. Also in this meeting we talked about the other two- (2)

cases that the Petitioner's Grievance was about. Mrs. Mary Ann Anderson and Tony Stanley both are white employees.

In that letter mark **[App. N.]** you will see Mr. Seels stated that she was a fourteen (14) years employee and had informed her temporary lead person that she would only work four (4) hours of the Saturday evening. In **[App. O.]** Is a portion of the Transcript of the Arbitration Hearing here on out (AH) held on Jan. 6, 1999, the testimony of Mr. Randy Hearns being Cross Examined by the union attorney Michael Okun. See **page 220(15)-224(12)**. Also a copy of some write-ups that is in Mary Ann Anderson files, **[App. P]**

Also in that letter concerning Mr. Stanley, case he thought he saw his replacement in the building or he would have never left, Mr. Seels placed him on a two day suspension and back to work as usual. Now what Mr. Seels, did not say is that Mr. Stanley has done this before.

Here are some write-ups in Mr. Stanley files, **[App.Q].** Also in this letter you will not find another name the union and the Petitioner brought up and that was a Ms. Diana Cobbs, (Black African American Woman). Ms Cobbs was an 18-years employee and write-ups in her files, but she was terminated. **[App. R.]**.

[4]The Petitioner filed an appeal with the ESC concerning those allegations that the Respondent had submitted the Petitioner with a verbal written warning, and being on a continuous operation leaving work without been properly relieved. On March 16, 1998, at-

---

4. The Respondent stated that they gave the Petitioner a verbal written warning, and if the court will take a look at App., AA#25 they admitted it was a Clerical Error. But fought the Plaintiff about the error on their part to stop him for receiving his unemployment to provide for his family. The Defendant knew that they did not have a case without the verbal written warning.

the hearing the Petitioner had a witness of the name of Mr. Doug Martin, President of Local Union 465-S. **[App. S].**

Also was submitted was a tape recording of the hearing recorded by ESC held on March 16, 1998. and a copy of the call in log sheet, that the Petitioner had ESC to subpoena. The Petitioner replacement had called in on the day of Jan. 16, 1998, the same documents that the Petitioner repeatedly asked management to submit.

This shows the Negligence and the Recklessness of the Respondent when they found out the time of the' Petitioner's replacement called in, but did nothing to inform neither the union nor the Petitioner. Also in the Respondent's Response to Petitioner's Interrogatories, dated March 9, 2001 see **[App. T. P. 86[6]-[21].**

In fact Mr. Grubbs had checked the answering services @ 11:35 p.m. the Respondent had the evidence that would have supported the Petitioner claim, they allow me to leave just to write the Petitioner up on a bogus charge. In fact Mr. Grubbs made a statement at the AH, that since the Petitioner clocked out at the end of his shift.

On Jan. 16, 1998, they had no one to run the Petitioner machine, which was the sheeter. Mr. Grubbs had to find an employee to run the Sheeter the remaining of the third shift, now what Respondent stated was false that was done deliberate to terminate the Petitioner with Disparate Treatment due to the Petitioner's race.

Which is Black African American. Mr. John Means giving testimony at the AH. **[App. U].** This action only will show the Supreme Court that Mr. Means told Mr. Hearns about how the presses were down on third shift Jan. 16, 1998, at the meeting that we had on the 22 of Jan. 1998, and what the Plant Manager stated was pretext.

On April 25, 1998, we had another meeting of the grievance procedures. The Petitioner told the company that employees name Ms. Gladys Coley (Black African

American woman) overheard the two white supervisors, Mark Grubbs and Wes Woods conversation on the 15th of Jan. 1998 after Mark Grubbs allowed the Plaintiff to leave. Ms. Coley heard them say, "LEWIS WALKED OFF THE JOB". **[App. V].**

This was done with evil motives. On April 15, 1999, the Arbitrator Rule in the Plaintiff favor. **[App. W, on p. 13, 2nd ¶ eight lines down]** It's states "The Company's decision to withhold the discharge penalty and impose minor discipline in the only other two past application of this rule likewise indicates that circumstances may reduce the level of culpability for this infraction".

Also in **[app. W, on p. 14, 1st ¶,]** states "First as an indication that the grievance violation was not as premeditated as charge by the company". Also on the same page "The ultimate penalty of Discharge is so unreasonably Harsh in view of the mitigating and extenuating circumstances, including the minor discharge administered to other employees who violated the rule, the Arbitrator must reverse this abuse" The Petitioner was awarded reinstatement, and placed back on the sheeter.

Since my return the Petitioner was subjected to Harassment, Retaliation, and Respondent Violated and Deprived the Petitioner of his Civil and Constitutional Rights of Freedom of Speech and Religion, under section *42 USC §§ 1981* Deprivation of Rights. Now the last week in April 1999, the Petitioner went back to work with the Respondent, and back to the sheeter machine as a sheeter operator.

While the Petitioner return he had to file severe grievances. The Petitioner and the Respondent had many meeting together for the grievances that the Petitioner had to file. On Feb. 4, 1998, we had our first meeting concerning 1/29/98 grievances **[app. m].**

In the union handbook page 28, you will see an employee has four steps to go through before you go to Arbitration. So then when the Plaintiff was reinstated we

had approximately two more meetings making the total of six meeting before the July 28, 1999 incident.

Every meeting we had the Petitioner Elder Lewis Banks always open with his opening statement like this, I like to give HONOR TO MY LORD and SAVIOR JESUS CHRIST, because he made it possible for me to be here today" and then I will continue on with my statement of events.

In the meeting dated July 28, 1999, Mr. Holtz stopped the meeting stating that the Petitioner was praying. **[App. X]** The Petitioner informed the plant manager that he was not Praying. In the Affidavit Mr. Means, he also stated that what Mr. Holtz done was wrong see **[app. E].** Now the Petitioner have been making that statement at every meeting until the meeting we had on 7/28/99, see grievance filed on July 30, 1999, **[App. Y].**

In fact the Petitioner had submitted a letter title: General Discussion in Detail, dated July 12, 1999, before the incident dated July 28, 1999, meeting. On page 3, 3rd ¶ two lines down shown the court that the Petitioner always opened up in that manner.

The plant manager made a statement in the write-up dated August 4, 1999, (after I filed my grievance app. Y). the last sentence "This Company does not condone or promote any religious beliefs in forums of any kind". In the Discovery Process, dated March 16, 2001, the Respondent response to the Petitioner Request of Documents.

In category **A. Policy** {c} On Freedom of Speech and Religion, the Respondent responded with these three Documents see **[App. Z]** nowhere in those documents do it states what Mr. Holtz's, stated. "This Company does not condone or promote any religious beliefs in forums of any kind".

The Respondent action was done to Harass the Petitioner to Deprive the Petitioner of his Constitutional rights. The reason that the Respondent stated why they stopped the meeting was pretext see **[app. AA#14 and app. E & F].** On Aug. 1999, The Respondent

management had accused the Petitioner of having one of the lowest productions out of the sheeter department.

On Aug. 26, 1999, the Petitioner filed a grievance on Harassment and Retaliation. In fact the Petitioner's average was one of the highest out of the three operators. The runs Mr. Tim Loftis (white male) had help with some of his production.

On October 6, 1999, the Defendant had wrote-up the Petitioner for Absenteeism. The Petitioner file a grievance on 10 /10 /1999, title Retaliation and Harassment / what next? But for Mr. Wells they allowed him to receive three (3) verbal written warning first like the contract states. The Respondent stated that they counseled the Petitioner when he reached 5 points and they gave the Petitioner a verbal written warning.

That was not the case the Petitioner told the Respondent to produce the verbal written warning, with the Respondent and the union signature on it. The Petitioner asked that the company follow the contract. That write-up was to harass the Petitioner and to retaliate.

Doing the investigation of one of the Petitioner grievance about how the white management had Black employees in the plant to do odd job before they ask the white employees to do them. Out of that investigation Ms. Conja Ware, had interviewed severe employees to give their testimony about Discrimination in the plant.

The Respondent reason for nondiscrimination is pretext. If the Supreme Court take a look at [app. B] the Judges Opinion dated Dec. 18 2001. P. 13, 2nd ¶, last sentence. The Respondent's Memorandum, filed dated July 10, 2001, 2nd page concerning: Hiring of Kevin Wells, where the Respondent stated that the company did not have too post the position that is not the case.

The Respondent just made a statement but with no proof of their allegations where is the evidence the Petitioner asks. The Supreme Court will see in the contract union handbook on page 20 under section 10. See **[App. I]** Subsection (a), through (h).

[7]Mr. Wells never worked as a 2nd pressman at the other plant, nor did he show any experience when he came to the plant on E. Market St. Mr. Wells had no experience as an 2nd pressman IP3. Mr. Moyer (Black employee) was also one of the employee that the company had asked him to train Mr. Wells.

In December of 1997, Respondent took me off the sheeter to help train Mr. Wells, in feeding the press. **App. T, p. 70(15)** this will show the Plaintiff had to go back to the sheeter because one of the sheeter operators was retiring. That means the Petitioner was off the Sheeter when Mr. Wells had entered the plant to help train Mr. Wells as the Petitioner stated. The Respondent stated that he was not next inline for the position of 2nd pressman IP3, neither were the Black employees that was next inline, was not next inline see **[App.AA,#4].**

Here is a document that the company had to promote Mr. Moyer and Ms. Jones, because of the grievance's Mr. Moyer continue to file. The defendant settled, the document speaks for itself **[App. BB].**

The Petitioner never stated he was next for the positions see EEOC affidavit **App. H, beginning on p. 3**. The Petitioner was not next for the sheeter position but the Plaintiff was awarded the position when the company had followed the contract and posted the job opening.

The Petitioner had filed a grievance on the Respondent not posting the position for a 2nd pressman IP3 see **App. G** the grievance dated 1/5/1998 not once did the Petitioner ever say he was next inline. Only to say " give in-house the opportunity to bid for the new position", that's what the contract states.

It was an unlawful practice when the Respondent did not post the position. The senior person on the sheeter at the time of question was Mr. Tim Loftis. Now

---

[7]. Affidavit of {app. D, E, and F, all testified that Mr. Wells did not have the qualification of a 2nd pressman IP3.

Mr. Loftis stated to the Plaintiff that he wanted to retire on the sheeter since he is in his Fifty's. He did not want to move forward to the press and to be told what to do by all of those people on the press.
In fact he is still on the sheeter machine right now today. So that made me senior person. That's why the company moved me back to the sheeter machine.

SUMMARY OF ARGUMENT

In the Memorandum Opinion dated Dec. 18, 2001, p.6, footnote #5 for failure to assert that the Plaintiff had received a right-to-sue letter from the EEOC. The complaint in the present action filed August 25, 2000 cured this defect. Let the Petitioner show the Panel where the DEFECT lies.

In the case that was filed in the Middle District Court under case # 1:00CV00144. One month after filing the complaint the Petitioner did in fact submitted his right to sue letter as evidence to the court. See Petitioner's Supporting Document, **[App. CC].**

[8] The Respondent stated that Kevin Wells had experience working on the press as a 2nd pressman IP3. And the employees that were working on the press weren't qualified for that position of IP3. In Petitioner's document Supplementary Informal Reply Brief, filed March 20, 2002 **[App. DD]**, also the affidavits marked **App. D, E, and F**. And if the Supreme Court looks at the Petitioner's Supporting Document To Show More Circumstantial Evidence, dated May 16, 2002, **app. C**, reflects when Kevin Wells was placed on the seniority list Feb. 16, 1998. The Respondent had six (6) other employees that they overlooked for promotion in which all were Black African Americans. See **app. AA-2,** under Defendant's Supplemental #4.

But if the Supreme Court look at **app. C,** the

---

8. In the App. DD, 2nd p. last ¶, "The contract is clear on the employer right to hirer from outside sources if none of the incumbent employees seeking a job are deemed qualified". See seniority list App. C .

seniority list. Mr. Wells enter the plant in Dec, 16, 1997, some of the black employees Class Date like Ms. Cunningham, was a 2nd pressman IP2, but in the app. AA-2 #4 the Respondent have Ms. Cunningham down as a feeder operator.

The court will see what the Respondent stated was false Ms. Cunningham was not a feeder Op., Ms Jones was not a feeder Op., Mr. Morehead, was not a feeder Op., pretext, that was done to mislead the court. The employees were in fact 2nd Pressman's IP2. The Middle District, the Appellate Court Erred in their decision.

The Petitioner file a grievance that the Respondent did not post the new position nor did they progress the next employee that was next in line for the 2nd pressman IP3.

The Respondent told the NRLB that they did post the position and none of the black employees was deemed qualified so they had the right to go out side of the plant to fill the new position. Now at the Discovery period the Respondent is stating now that "ONLY ENTRY LEVEL POSITIONS ARE POSTED," see **app. B.**

I asked the Supreme Court where is the evidence of that statement. Jim Seels made a statement without Material Facts the court ruled on a hearsay statement without material facts. The Respondent did not make that statement to the NLRB, EEOC, ESC, not even to the Arbitrator, WHY? Because it is false.

That is not what the collective bargaining agreement states or the union contract states see **app. I.** [9]But in fact Kevin Wells did not have the experience like

---

[9]. Petitioner's Supporting Document To Show More Circumstantial Evidence, dated May 16, 2002, **App. EE,** will show that Wells duties was only a press helper who feeds and loads the paper at the end of the press he was not even qualified as a 2nd pressman IP1.more less an IP3, **app. D, p.2 first ¶. App. E, F.**

the Respondent stated Wells enter the plant on E. Market St. on Dec. 16. 1997, three weeks after he was terminated from the same company for fighting another employee, **[App. EE],** speaks for itself, and the Respondents conduct of this matter by rehiring Mr. Wells favoritism.

After I filed that grievance on Jan. 5, 1998, the Respondent came after me in retaliation for opposing the wrongdoing of the Respondent. On Jan 15, the white Supervisors Mark Grubbs and Leonard Ludswaki had informed the Petitioner he could leave at the end of his eight-hour shift. The Petitioner clocked out at 11; 00 PM. See **app. S, 78(18)-79(1),**

Mr. Okun, reading Mr. Grubbs, statement to him in the first sentence, "Now on the 15th you've got your note here, it says, "At that night I told him That on that night schedule would allow that but not to plan it on every time".

But if you look at Judge Osteen, Memorandum Opinion dated Dec. 18, 2001, p.4, 4th, ¶, "He also argued that the plaint had not been in continuous operations that night". First of all the Petitioner never stated those words "*that night*" Mr. Grubbs used those words *that night*. See **app. T, 3rd page**. If Judge Osteen and the Appellate Court had looked at the evidences they would have known.

After the Respondent allowed the Petitioner to leave at the end of his shift which is from 3:00 p.m. to 11:00 p.m. the Printing Dept. was on a schedule of eight hours a day, five days a week, and week-ends off. [10]The two white supervisor made a statement that "LEWIS WALKED OFF THE JOB" right after thev allow the Petitioner to clock-out on Jan. 15, 1998, Material Fact.

On Jan. 16, 1998, at the end of my shift the white supervisors Mark Grubbs, and Leonard Ludswaki allowed me to leave just to write me up on those charges

---

[10] see Plaintiff's Response Brief to Defendant's Memo. Motion For Summary Judgment, dated Aug. 20, 2001 beginning on page 5, last ¶, and app V.

of walking off the job. This was done Intentionally. The Respondent stated that the Petitioner violated the contract that is marked **app. J**. The Petitioner was then terminated adverse action, Material Fact.

When the Respondent charged the petitioner of violating the union contract (Exhibit D Miscellaneous number 3). The Respondent was not in that operational mode of continuous operations. At the time of questioning the Printing Dept. was working three eight hours shifts and weekends off.

[11]The contract defines what continuous operation modes consist of Material Fact. What the Respondent said the Petitioner had violated was Pretext to hide the real reason to discriminate also Mr. Ralph Meers Union Secretary and Local Representative questioned by EEOC **App. FF** .

No where will the Supreme Court be able to find any evidence from the Respondent stating that eight hours shift five days a week and week-ends off is a continuous operation mode, Material Fact..

In the Affidavit of Jim Seels, page 3, #9 states "was in a continuous 24-hour operation" **see App. GG, and App. HH, section 2**], here is the 24 hours he is referring to the four tour, that was stated to mislead These actions were done Intentionally.

[12]There where three others who was charged with the same violation of Walking Off The Job, (Exhibit D Miscellaneous number 3), and at the time when Ms. Anderson and Mr. Stanley was charged the Respondent was in a continuous operation mode. see App. P, Mary

---

[11] see the Petitioner's Informal Memo. App. JJ. Section 1, 2, and 3,

[12] The Plaintiff may prove pretext by offering evidence that similarly situated employees who are not in the Plaintiff's protected group were treated more favorably or did not receive the same adverse treatment, Plaintiff's Response Brief to Defendant's Memo. Motion For Summary Judgment, see App. J.

Anderson, App.Q, Tony Stanley, both are (white employees), but they were not terminated.

The other employee is Diane Cobbs, (black) see App. R. Ms. Cobbs, was terminated. The only thing that the Respondent submitted as evidence was one Affidavit of Jim Seels. The Middle District and the Appellate Court took one Affidavit over all the exhibits, Affidavits that the Petitioner submitted to the courts. See **App. II.**

The Petitioner submitted his EEOC right to sue letter, with cause and his Affidavit from the Petitioner see **App. S**. also an audio-tape submitted by the ESC. The President of the union Doug Martin, stating while under oath, that the Respondent was not in a continuous operation mode, nor was he given a verbal written warned of a violation.

And how the adjudicator stated that the Respondent was not in a continuous mode. The Respondent stated in the answer to the Plaintiff interrogatories that was submitted to the company and was answered on March 9, 2001, **App. AA, # 5, and # 25,** stated now it was Clerical Error.

The Defendant did and tried everything to stop the Petitioner in supplying for his family. The Respondent actions were intent, willful, and motivated to discriminate against the Petitioner, Material Fact.

More Material Facts see **App. JJ**, how EEOC investigated the allegation that the Respondent had offered the petitioner back his job, pretext. **App. M**, ESC Determination, the company stated that they gave the Petitioner a verbal warning about walking off the job.

The Petitioner was denied unemployment. The Petitioner appealed and won, see **App. KK, page 256(6)-257(7),** will show how the Defendant lied to the Frick Co. and lied to ESC, that they gave the Petitioner a verbal written warning that was not the case Material Fact.

In **App. W,** the arbitrator touched on it and made the ruling on "Not as premeditated as charge by the company", arbitrator also stated "The ultimate penalty of Discharge is so unreasonable harsh in view of the

mitigating and extenuating circumstances, including the minor discharge administered to the other employees who violated the rule, the Arbitrator must reverse this abuse", Material Fact.

This is clear evidence that the Respondent did in fact discriminate against the Petitioner. The Respondent proffered nondiscrimination explanation reason was false. Title VII prohibits employers from treating applicants or employees differently because of their membership in a protected class.

The central issue is whether the employer's actions were motivated by discriminatory intent, which may be proven by either direct or circumstantial evidence. Under its analysis of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), judgment for Defendants was mandated.

We find that the district court misinterpreted relevant Title VII case law by heightening Plaintiff's burden and requiring him to produce direct evidence of discriminatory animus in the re-selection procedure.

We, therefore, reverse, enter judgment for Plaintiff, and remand this case to the district court for the calculation of damages. Plaintiff may also proceed under the direct method by offering any of the following three types of circumstantial evidence. [13]The first type

---

[13] **suspicious timing**-After the Petitioner filed a grievance, 17 days later terminated, other bits and pieces more.....
Ambiguous statements oral or written-how the Petitioner write-up was already prepared, how the Respondent mislead the ESC about the verbal warning, how the Dept. in Jan 1998, was on a five day week, and weekends off and how the Respondent stated we was in a four tour continuous Op. other bits and pieces More.....
behavior toward or comments- how the two white supervisors discussing after they allow the Petitioner to leave, stated Lewis Walked Off The Job, and was terminated with the same statement that was made, other bits and pieces more.....

consists of directed at other employees in the protected group, and other bits and pieces from which an "suspicious timing, ambiguous statements oral or written, behavior toward or comments inference of discriminatory intent might be drawn. See *Ennis v. Nat'lAss'n of Bus. & Educ. Radio*, 53 F.3d 55, 58 (4th Cir. 1995

The second type is evidence that other, similarly situated employees not in a protected class received systematically better-treatment, *Marshall v. American Hospital Assoc.*, 157 F.3d 520 (7th Cir. 1998).

The third type is evidence that the Plaintiff was qualified for the job, a person not in a protected class got the job, and the employer's states reason for it decision is unworthy of belief. This third type of circumstantial evidence is substantially the same, as the evidence required by the McDonnell Douglas method described.

See *Theard v. Glaxo, Inc.*, 47 F.3d 676, 680 (4th Cir. 1995) (noting that plaintiff must point to"specific facts" supporting each element of prima facie case in order to avoid summary judgment). The court also added that, However, that this standard is not inflexible, as "[t]he facts necessarily will vary in Title VII cases.

And the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect in differing factual situations". Like for instance: ***In a termination case, the second element is whether the plaintiff was performing up to the employer's legitimate expectations.***

In the cases of *Atkins v. Board of School Commissioners of the City of Indianapolis*, 830 F.Supp. 1169 (S.D.Ind. 1993), in order for Mr. Atkins, to establish a Prima Facie in his case he must present facts, which shows that: (1) he or she is in a member of a protected class. (2) He or she conducted himself or herself in a manner consistent with his or her employer's legitimate business expectation. (3) He or she suffered

from adverse employment action; [14](4) and similarly situated employees who were not in a member of a protected class were treated more favorably.

In the Respondent Memorandum in support of Appellee's Informal Brief, page 3, "because his job performance was not satisfactory". In the Petitioner's Response Brief to the Defendant's Memo. Motion for Summary Judgment, on page15, under Performance: "The Defendant made another statement that the Plaintiff job performance was not satisfactory, that reason is phony.

Nowhere is it stated that the Plaintiff work performance was a factor. The Defendant had to respond to these agencies ESC, NLRB, EEOC, evening at the Arbitration Hearing the court will not find anywhere concerning the Plaintiff's had poor work performances.

The Petitioner will show the court that the Defendant reason is pretext. When the Arbitrator reinstated the Petitioner, Mr. Foster placed the Petitioner back on the sheeter. If the Petitioner work performances was a factor the Defendant did not rebuttal. { **app E, app. S, ESC Hearing,**} **{app. T, JS supervisors making statements about the Plaintiff performance**. In *Gilty v. Village of Oak Park*, 919 F.2d 1247, 1250 (7th Cir. 1990). Material Facts.

In the case of *Plair v. E.J. Brach & Sons, Inc.* 105 F.3d 343, 347 (7th Cir. 1997), Plair's appeal centers on his assertion of indirect evidence of racial discrimination. Applying the McDonnell Douglas-Burdine burden- shifting test, Plair first must establish a prima facie case of racial discrimination by a preponderance of the evidence. Sample, 61 F.3d at 547.

Without a prima facie case, Plair cannot withstand summary judgment. To do so, he must show (1) he is a member of a protected class, (2) his job performance met Brach's legitimate expectations, (3) he was fired, and (4) that another, similarly situated but not of the protected class, was treated more favorably.

---

[14] see Appendix. LL

A plaintiff need only to show that performance was of sufficient quality to meet continued employment, thereby raising an inference that some other factor was involved in the decision to discharge plaintiff. The plaintiff need not prove performance was flawless. See, *Denison v. Swaco Geolograph Company* (10th Cir. 1991) 941 F.2d 1416, 1420.

See also, *LaMontagne v. American Convenience Prods., Inc.* (7th Cir. 1984) 750 F.2d 1405, 1413-14, holding plaintiff established prima facie case that job performance generally satisfactory despite other evidence to the contrary.

In app. B, the Memorandum Opinion dated Dec. 18, 2001, on the second page, 6 lines down states "Plaintiff, who is black, claims that Defendant discriminated against him by failing to promote Plaintiff to a position filled by a white man." That wasn't the Petitioner claim.

Not once did the Petitioner every state that he wanted to be promoted to that position for the position that Mr. Wells received nor did the Petitioner state he was next in line for the position see Petitioner **App. H, p. 4 of my EEOC Charge, and Affidavit. And the complaint dated August 25, 2000, p.2, ¶, 2-3, also August 20, 2001, on page eight under Response 4th ¶ and on page 9, 2nd ¶.** Supreme Court will see it was clear erroneous ruling of the Middle District Court.

In app. B, the Memorandum Opinion dated Dec. 18, 2001, p.3, 1st ¶, 8TH lines down, "Defendant was not required to post job opening for positions that were not entry-level" also on p.9, 3rd ¶,. "The second pressman position was not an entry-level position, but the third position in the progression of jobs within the printing department".

In the Petitioner, **App. I, (a)-(h) shows that the Respondent contracted REALLY state "in a line of progression that the Respondent was required to post the position".** supreme court will see it was clear erroneous ruling of the Middle District Court and the Appellate Court over look the contract.

In app. B, the Memorandum Opinion dated Dec. 18, 2001, **p.4, ¶ 4, "continuous operations,** an employee could not leave his post until properly relieved". The Petitioner submitted evidence to showed that at that time of question the company was not in an continuous operation see **App. S, #9, and App. HH**.

Also a tape from the President of the Local Union given testimony that the company was not in the operational mold, and the out come from the ESC of appeals ruled in the Petitioner favor, this is circumstances evidence. Supreme Court will see it was clear erroneous ruling of the Middle District Court.

In app. B, the Memorandum Opinion dated Dec. 18, 2001, on p. 3, last ¶, "The following day, Friday, January 16, 1998, Plaintiff heard other employees discussing the fact the Plaintiff had left work the previous night without being relieved".

Now if the Supreme Court take a look at the evidences that the Petitioner submitted see complaint date 8/20/2000, p.4, ¶, 7, 4 lines down. "Leonard and Mark Grubbs came up on the platform to inform the Petitioner that Teddy will not be coming in tonight", That means that the Petitioner was still their.

Also in the Petitioner Response dated 8/20/2001, p. 15, 2nd ¶, 5, lines down, [**app. T, p. 78(18}-79[25].** It shows that the supervisor allowed the Petitioner to leave on the 15th. On the same page and ¶,

The Plaintiff did not asked them, just Mr. Loftin, who the Petitioner relieves, but that was after what Ms Gladys Coley had stated. You cant find that nowhere in the Judge Opinion that Ms. Coley overheard the two white supervisors discussing to terminate the Petitioner on a bogus charge on the 15th of Jan. 1998 see **App. V**, and **App. U, p. 368(18)-369(10)**. Direct Evidences. The Supreme Court will see it was clear erroneous ruling of the Middle District Court and the Appellate court.

In app. B, the Memorandum Opinion dated Dec. 18, 2001, p.4, 3RD ¶, it do not state that. The write-up was already prepared see complaint dated 8/25/2000, p.6, ¶, 10, **App. U, p371 (19)-372(14),** also Ex 32-p.103

(4)-105(13). On the same page 4TH ¶, "He also argued that the plaint had not been in continuous operations that night".

First of all the Petitioner never stated the words "*that night*", see Ex 13M, taped testimony of Mr. Doug Martin. Mr. Martin also stated that the company was not in a continuous operation. Direct Evidences.

On the same page and ¶, beginning with line 4. The Petitioner submitted proof that the company did not warn the Petitioner like the judgment of a opinion states see **app. KK**, but doing the Discovery period see App. AA #5 and #25, the Respondent now calls it Clerical Error why they told the ESC that they did give the Petitioner a verbal written warning. The Supreme Court will see it was clear error of the Middle District Court and the Appellate court.

In App. B, the Memorandum Opinion dated Dec. 18, 2001, p.4, last ¶, and p. 5, to the 2nd ¶, Where? is the other employee that was discharge for walking off the job. Her name is Ms. Diana Cobbs a Black African Woman, where is Ms. Cobbs in this judgment of opinion?

Ms. Cobbs case will shows a pattern in the Respondent's conduct of protecting the employees in the non-protective group

In App. B, the Memorandum Opinion dated Dec. 18, 2001, p.4, 3RD ¶, eight lines down the word "circumstances" Why? Because the arbitrator touched on it and made the ruling on "Not as premeditated as charge by the company", Judge Osteen did not finish the statement.

It goes like this see **app. W**, "The ultimate penalty of Discharge is so unreasonable harsh in view of the mitigating and extenuating circumstances, including the minor discharge administered to the other employees who violated the rule, the Arbitrator must reverse this abuse". See Response Brief, dated 8/20/2001, p.6, and 1st ¶. It is very clear that the Petitioner was discriminated against because of his race. The Middle District Court erroneous judgment.

In App. B, the Memorandum Opinion dated Dec. 18, 2001, beginning with p.6, 2nd ¶,. That was not the case it was the same meeting and the only meeting that anyone ever said anything about my opening statement. See complaint dated 8/25/2000, p.9, ¶, 17, also Response Brief dated 8/20/2001, p. 6, 3rd ¶, and **app. E 2nd ¶.** it did not happen in another meeting first, it happen just like I explained it. The Middle District Court erroneous judgment.

The Petitioner argues in his brief that the district court's finding of pretext is a mixed question of law and fact, which should be reviewed by this court using the *de novo* standard of review. A determination of pretext is an intermediate factual step in the determination of the ultimate factual finding of intentional discrimination or the lack thereof.

It is a finding of fact subject to the clearly erroneous standard of review. In the case at bar, the district court's determination of whether the Petitioner proved that the reason for terminating the Petitioner was a pretext, and once the Supreme Court see the evidences of intention will be reviewed and the supreme court will see it was clear erroneous ruling of the Middle District Court.

A. Standard of Review

Under Nature of Review 28 USC § 2716, The general standard that an appellate court applies in reviewing the grant or denial of a summary judgment motion is the same as that
employed by the trial court initially under ru e 56(c), see Helm. v. West Maryland Ry. Co. C.A.4th 1988 838, F.2d 729, 734.

A summary judgment is proper wher it appears "that there is no genuine issue as to any material fact and that the moving party is entitle to a judgment as a matter of law," The way in which this test is applied at the appellate level is designed to give the party who defended the motion the benefit of any doubt as to the propriety of granting summary judgment.

The Supreme Court has used the following language to emphasize the way in which the reviewing court should evaluate the record on an appeal from a summary judgment:"

1. On summary judgment the inferences to be dawn from the underlying facts contained in such materials [affidavits, depositions, and exhibits] must be reviewed in the light most favorable to the party opposing the motion and "we look at the record on summary judgment in the light most favorable to the party opposing the motion.

Once a motion for summary judgment is properly made and sup-ported, the opposing party has the burden of showing that a genuine dispute exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). The mere existence of some alleged factual dispute between the parties, however, will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.

See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. See id. at 248.

2. The message is clear the party who defended against the motion for summary judgment will have the advantage of the court's reading the record in the light most favorable to him, see Smith v. University of North Carolina, C.A. 4th, 1980, 632 F.2d 316, 338. The court will have the allegations taken as true.

See, Thornbrough v. Columbus & Greenville RR Co. C.A. 5th, 1985, 760 F. 2d 633, 640. And will receive the benefit of the doubt when his conflict with does of the movant, Charbonnages de France v. Smith, C.A. 4th, 1979, 597, F.2d 406, 414,

In other words, summary judgment should be granted in those cases in which it is perfectly clear that no genuine issue of material fact remains unresolved and inquiry into the facts is unnecessary to clarify the

application of the law. McKinney v. Bd. of Trustees, 955 F.2d 924, 928 (4th Cir. 1992); same Smith, 597 F.2d 406, 414 (4th Cir. 1979).

In making its determination under this standard, this court must draw all permissible inferences from the underlying facts in the light most favorable to Plaintiffs. Matsushita Elec.v. Indus. Co., 475 U.S. at 587-88; McKinney, 955 F.2d at 928. This Court reviews a grant of summary judgment de novo, viewing all facts and inferences in the light most favorable to the nonmoving party. See Providence Square Assoc., L.L.C. v. G.D.F., Inc., 211 F.3d 846, 850 (4th Cir. 2000).

Summary judgment should be granted only when it is perfectly clear that no issue of material fact exists, and it is not necessary to inquire further into the facts in order to clarify the operation of the law. McKinney v. Bd. of Trustees of Mayland Cmty. Coll., 955 F.2d 924, 928 (4th Cir. 1992). All "evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor. The Appellant in this case believed that the Middle District Judge error in the issue of the appellants evidences.

The court of appeals is authorized to set aside the district court's grant of summary judgment when its order in opaque and unilluminating as to either the relevant facts or the law with respect to the merits of appellants claim, Boazman v. Economics Lab Inc, C.A.5th 1976, 537, F.2d 210. Summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.

At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. There is no such issue unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.

A. Analysis

Title VII prohibits employers from treating applicants or employees differently because of their

membership in a protected class. The central issue is whether the employer's actions were motivated by discriminatory intent, which may be proven by either direct or circumstantial evidence.

Under its analysis of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), judgment for Defendants was mandated. We find that the district court misinterpreted relevant Title VII case law by heightening Plaintiff's burden and requiring him to produce direct evidence of discriminatory animus in the reselection procedure. We, therefore, reverse, enter judgment for Plaintiff, and remand this case to the district court for the calculation of damages.

Plaintiff may also proceed under the direct method by offering any of the following three types of circumstantial evidence. 1. The first type consists of "suspicious timing, ambiguous statements oral or written, behavior toward or comments directed at other employees in the protected group, and other bits and pieces from which an inference of discriminatory intent might be drawn. See Ennis v. Nat'lAss'n of Bus. & Educ. Radio, 53 F.3d 55, 58 (4th Cir. 1995

The second type is evidence that other, similarly situated employees not in a protected class received systematically better-treatment, *Marshall v. American Hospital Assoc.*, 157 F.3d 520 (7th Cir. 1998).

The third type is evidence that the Plaintiff was qualified for the job, a person not in a protected class got the job, and the employer's states reason for it decision is unworthy of belief. This third type of circumstantial evidence is substantially the same, as the evidence required by the McDonnell Douglas method described. see Theard v. Glaxo, Inc. , 47 F.3d 676, 680 (4th Cir. 1995) (noting that plaintiff must point to "specific facts" support- ing each element of prima facie case in order to avoid summary judgment)

In the first stage of this burden-shifting scheme, Plaintiff must prove, by a preponderance of the evidence, a prima facie case of discrimination. Upon proof of a prima facie case, a rebuttable presumption that

Defendant unlawfully discriminated against Plaintiff arises, Burdine, 450 U.S. at 252-54, and the burden of production shifts to Defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. Id. at 253.

Should Defendant carry this burden, the prima facie case is rebutted, and Plaintiff must then "prove by a preponderance of the evidence that the legitimate reasons offered by Defendant were not its true reasons, but were a pretext for discrimination." Id. This burden merges with Plaintiff's ultimate burden of persuading the trier of fact that he was the victim of intentional discrimination.

The Plaintiff can avert summary judgment for defendant in employment discrimination case by presenting evidence that he or she was qualified for job in question and that he or she lost it to or was otherwise treated less favorably that, member of another race, sex, nationality, etc. In the case of *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 257 101 S.Ct. 1089 (1981) The McDonnell Douglas Corp. v. Greens formula was used as well.

The court also added that, However, that this standard is not inflexible, as "[t]he facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect in differing factual situations" *Id*, at 802, n. 13, 93 S.Ct, at 1824 n. 13. **In a termination case, the second element is whether the plaintiff was performing up to the employer's legitimate expectations**, also to meet the 2nd -part test first articulated in. Williams v. Cerberonics, Inc., 871 F.2d 452, 455 (4th Cir. 1989). See cases *Atkins v. Board of School Commissioners of the City of Indianapolis*, 830 F.Supp. 1169 (S.D.Ind. 1993), in order for Mr. Atkins, to establish a Prima Facie in his case he must present facts, which shows that: (1) he or she is in a member of a protected class. (2) He or she conducted himself or herself in a manner consistent with his or her employer's legitimate business

expectation. (3) He or she suffered from adverse employment action; (4) and similarly situated employees who were not in a member of a protected class were treated more favorably.

The Supreme Court reaffirmed the holding of McDonnell Douglas and Burdine, emphasizing that Defendant bears the burden of production, and that the "Title VII plaintiff at all times bears the 'ultimate burden of persuasion.'" St. Mary's Honor Center, 113 S.Ct. at 2749 (emphasis added).

SUPREME COURT REJECTS "PRETEXT PLUS" FOR DISCRIMINATION CASES

Twenty-seven years after the Supreme Court established the now familiar burden-shift analysis for employment discrimination cases in McDonnell Douglas Corp. v. Green, the Court has finally and unanimously – rejected the notion that a plaintiff must establish "pretext-plus" to prevail at trial. In Reeve v. Sanderson Plumbing Products, Inc,. (99-536) 197 F.3d 688, reversed.

The Supreme Court ruled that a jury may find for a plaintiff who establishes **1)** a prima facie case of discrimination; and **2)** that the employer's proffered non-discriminatory reason for his discharge is false. Basically, Reeves will prevent employers from obtaining summary judgment where a plaintiff can adequately demonstrate a prima facie case of discrimination and pretext.

REASON FOR
GRANTING THE PETITION

If the court would have taking the evidence and judged it for the issues of matter of law, the court would have ruled summary judgment for the Plaintiff, because the Petitioner would have and will receive a verdict if and when we go to trial the proof is there by law on all the Petitioner's claims..

The Respondent stated that the Petitioner walked off the job without being properly relieved deliberately and insubordinate. That was not the case the evidences

that the Petitioner have shown that the supervisors allowed him to leave.

On the 15th of Jan. 1998, the supervisors looked over to the press and said since we are caught up you can leave. After the Petitioner clocked-out the supervisor stated that Lewis walked off the job. That was planned premeditated to terminate Elder Lewis Banks.

On Jan. 27, 1998 the Petitioner was terminated, after the Petitioner continue to asked management did anyone check the time log sheet. It is recorded on the 22nd of Jan. the meeting was held and the plant manager knew the answer but did nothing about it. Then I filed a Grievance about Race Discrimination with Disparate Treatment. Because there were three others that was charged with the same charge but only the two black employees were terminated for it. The Respondent reason for non-discrimination was false can all the agencies be wrong in finding the Respondent of discrimination. The Petitioner Civil Rights, and his Constitution was deprived, First, Fifth, Seventh and Fourteenth Amendment.

CONCLUSION

The Middle District Judge William Osteen erred in the judgment in granting summary judgment for the Defendant. When the Petitioner in this case presented the preponderance of evidences to support the Petitioner's claim of Retaliation with Intentional of Race Discrimination against Elder Lewis Banks, and violated the Plaintiff's Constitutional Rights of his First, Fifth, Seventh, and Fourteenth Amendment. Judge Osteen and the Appellate Court did not used the evidences that the Petitioner submitted nor his Affidavits as well. The Petitioner asked the Supreme Court to reverse this error.

Elder Lewis Banks
3204 Anvil Place
Greensboro, NC. 27407
336.852.1684

APPENDIX

A. Order from the Fourth Circuit of the Petition for Rehearing and Rehearing En Banc denied filed July 19, 2002.....A-1

B. Middle District Memorandum Opinion filed Dec. 18, 2001.....A-2

C. The Respondent Seniority List dated March 5, 1998,.....A-3

D. Affidavit from Shayne Suffern, for the Petitioner,...A-4

E. Affidavit from John Means for the Petitioner.....A-5

F. Affidavit from George E. Moyer for the Petitioner....A-6

G. Petitioner first Grievance filed Jan. 5, 1998.....A-7

H. Charge of Discrimination, Affidavit and Right To Sue Letter.....A-8

I. Job Bidding Procedure, between the Respondent and the Union, and the Progression list.....A-9

J. The rule that the Respondent alleged that the Petitioner had violated and was Terminated for it....A-10

K. The Petitioners termination letter from the Respondent dated Jan. 27, 1998.....A-11

L. The grievance form that the Petitioner filed Jan. 29, 1998, Termination for Discrimination with Disparate Treatment.....A-12

M. ESC. Determination by Adjudicator, concerning the Petitioner.....A-13

N. The 3rd step grievance answer dated March 4, 1998, from the Respondent.....A-14

O. Randy Hearns, testifying at the Arbitration Hearing Transcript, dated Jan. 6, 1999.....A-15

P. Mari-Ann Anderson Disciplinary Action and Warning Record dated 11/24/97.....A-16

Q. Tony Stanley files Record.....A-17

R. Diana Cobb Disciplinary Action and Warning Record, date 2-18-96.....A18

S. ESC Appeal Decision of the Petitioner Unemployment Benefits that was held March 16, 1998.....A-19

T. Mark Grubbs, testifying at the Arbitration Hearing Transcript, dated Jan. 6, 1999.....A-20

U. John Means, testifying at the Arbitration Hearing Transcript, dated Jan. 6, 1999.....A-21

V. Ms. Gladys Coley a co-worker overheard the two white supervisors planning the Petitioners termination, dated April 27, 1998.....A-22

W. The Arbitrator Opinion and Awards by Mr. Robert W Forster,.....A-23

X. After the Petitioner reinstatement Disciplinary Action and Warning Record dated 8/4/99.....A-24

Y. Petitioner filed grievance about his 1st Amendment and how the meeting was stopped, before the 8/4/99 Disciplinary Action and Warning Record A-25

Z. The Respondents' reply to a Interrogatory question from the Petitioner.....A-26

AA. Defendant's response to the Plaintiff's Interrogatories to Jefferson Smurfit dated March 9, 2001/ Defendant Supplemental Response to Plaintiff Interrogatories to Jefferson Smurfit, June 19, 2001 / Defendant's second supplemental response to Plaintiff's Interrogatories to Jefferson Smurfit.....A-27

BB. Settlement of Grievance Dated 6/18/99.....A-28

CC. Plaintiff's Motion for Reconsideration of case #1:00CV00144.....A-29

DD. Letter from the Defendant in response the Plaintiff complaint, that the company did not post the position, filed with the NLRB, dated July 8, 1998.....A30

EE. Harry Emerson Appeal Decision against the Defendant allegations, from ESC.....A-31

FF. Statement from Relph Meers, Union Secretary and Local Representative, dated June 6, 1999.....A-32

GG. Affidavit of Jim Seel, dated June 20, 2001.....A-33

HH. The Union Contract concerning the Continuous Operation.....A34

II. Supporting Facts and Argument List.....A-35

JJ. Predetermination Conference with Respondent from EEOC Investigator dated 5/24/99.....A-36

KK. Conja Ware, HR, testifying at the Arbitration Hearing Transcript, dated Jan. 6, 1999.....A-37

LL. Race Discrimination Disparate Treatment with Intent Comparative or Similarity.....A-38

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
July 19, 2002

No. 02-1063
CA-00-814-1

ELDER LEWIS BANKS
Plaintiff - Appellant

v.

JEFFERSON SMURFIT CORPORATION
Defendant – Appellee

On Petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should the denied,

IT IS ORDERD that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor

CLERK

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FILED
DEC. 18, 2001

ELDER LEWIS BANKS,
Plaintiff

v. *1:00-CV-00814*

JEFFERSON-SMURFIT,
Defendant,

MEMORANDUM OPINION

OSTEEN, District Judge

This matter is before the court on Defendant Jefferson Smurfit's Motion for Summary Judgment, Plaintiff Elder Lewis Banks' Motion to Be Relieved of the Obligation to pay for Mediator's Fee, and Defendant's Motion to Strike Affidavits to Plaintiff's Response Brief to Defendant's Motion for Summary Judgment.[1] For the reasons set forth herein. Defendant's Motion for Summary Judgment will be granted. Plaintiff motion be Relieved of the Obligation to pay for Mediator's Fee and Defendant's Motion to Strike will be denied.

---

[1] Plaintiff has also filed two additional motions styled "Plaintiff's Motion to Dismiss the Defendant's Answer Failure to State a Claim Upon Which Relief Can Be Granted" [4] and Motion and Memorandom to Strike Affidavits of John Means Geroge [sic] Moyer Shaney Suffern [sic] and other material" [61]. These Motions have no basis in fact and Plaintiff cited no law to make them material. They are subject to disposal without further elaboration.

I. INTRODUCTION

Plaintiff Elder Lewis Banks, acting pro se, initiated this action against his former employer, Defendant Jefferson Smurfit, on August 25, 2000, asserting violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and the U.S. Constitution. Plaintiff, who is black, claims that Defendant discriminated against him by failing to promote Plaintiff to a position filled by a white man, discharging Plaintiff on the basis of his race, and retaliating against him for filing grievance with the union. Defendant asserts that Plaintiff's claim lack merit and moves for summary judgment. For the following reasons, Defendant's motion will be granted.

II. FACTS

Plaintiff commenced his employment at Defendant's folding carton and boxboard manufacturing facility in Greensboro in December 1996. After working for six months in the finishing department, Plaintiff was reassigned to an entry-level "sheeter" job in the printing department. Plaintiff was responsible for operating a machine which cut boxboard to the size specified by the customer.

In December 1997, Defendant hired Kevin Wells for the position of second pressman in the printing department. The second pressman position was two levels above the sheeter position in the printing department's job progression. Mr. Wells was hired due to his previous training on printing presses. Plaintiff had no such experience and had not been trained for the second pressman position. (Def.'s Mot. Summ. J., Seel Aff. ¶¶ 3-6.) [2]

On January 5, 1998, Plaintiff filed a grievance with the local union protesting Defendant's hiring of Mr. Wells without first posting the position internally. Under the Collective bargaining agreement which existed between Defendant and the Graphic Communication

---

[2] According to Plaintiff, however, he was asked to help train Mr. Wells on the operation of the press. (Compl. ¶ 1.)

between Defendant and the Graphic Communication Union, Local 465-S, Defendant was required to post entry-level job openings internally before turning to the general public for applicants. If no current employee was deemed qualified for the position, Defendant was free to seek qualified applicants from outside of the company. Defendant was not required to post job openings for positions were not entry-level. (Def.'s Resp. Opp'n Pl.'s Mot. Order Compelling Disclosure or Disc., attachment to Def.'s Resp. Pl. 's Interrogs.)

Defendant also had agreement with the union regarding the continuous operation of its machinery at peak production times. If production requirements demanded, the plant would operate 24 hours a day, with workers relieving each other as the shift changed so that the machines were never shut down. It was "continuous operation," an employee could not leave his post until properly relieved, and would be required to work overtime if necessary until a replacement was located. (Id.)

On January 15, 1998, a Thursday, Plaintiff was working the second shift, from 3 p.m. to 11 p.m. Before the end of his shift, Plaintiff was approached by his supervisor and told that his replacement, the third-shift sheeter, would not be coming to work that night. Plaintiff responded that he was not staying late and would be going home at the end of his shift.

Plaintiff's supervisor reported this to his own superior, Mark Grubbs, who then told the shift supervisor, Mr. Lukasik. After reviewing the outputs of Plaintiff's machine. Mr. Lukasik decided that Plaintiff's machine did not need to be run continuously that night. Mr. Grubbs then told Plaintiff he could go home because he was not needed. He also reminded Plaintiff that if his replacement did not show up, Plaintiff could be required to work overtime of up to four hours. Plaintiff punched out at 11:05 p.m. and went home. (Pl. 's Dep. Filed June 20, 2001 Ex. 7 (Arb. Op.), at 4-5)

The following day, Friday, January 16, 1998, Plaintiff heard other employees discussing the fact that

Plaintiff had left work the previous night without being relieved. Plaintiff asked them if he could be terminated for leaving before his replacement arrived. They told Plaintiff that he could. (Id. At 5.)

Later that evening, Plaintiff's replacement called in once again to report that he would not be in to work. This message was not immediately received by any of the supervisors, however, and was not communicated to Plaintiff. At the end of his shift on January 16, Plaintiff shut down his machine without being relieved. He then turned in his paperwork to Mr. Lukasik in the office, who told Plaintiff to have a good weekend. Plaintiff clocked out at 11:05 P.M. and went home. (Id.)

About 20 minutes later, Mr. Grubbs noticed that Plaintiff's machine was dark and was not in operation. After checking the call-in sheet, Mr. Grubbs realized that Plaintiff's replacement had called in absent several hours before the end of the shift. Mr. Grubbs then called Mr. Lukasik at home, who said he had not given Plaintiff permission to go home without being relieved. (Id.)

The next work day, Monday, January 19, 1998, a meeting was conducted between Plaintiff, Mr. Lukasik, and a union representative to discuss Plaintiff's conduct. When told that he was being charged with leaving his post without being relieved, Plaintiff became loud and boisterous and stated, "this is a modern day lynching." At the close of this meeting, Plaintiff was suspended pending further investigation. (Id. At 6.)

During the subsequent investigation, Plaintiff asserted that no one had told him that he was needed to stay late the night of January 16, as they had done in the past. He also argued that the plant had not been in continuous operations that night. Nevertheless, the plant manger found that Plaintiff had deliberately violated a clearly stated plant rule by leaving his post without being properly relieved and issued Plaintiff a letter of discharge dated January 27, 1998. (Id.)

Prior to this incident, other employees had been disciplined for walking off the job, but under different circumstances. Tony Stanley, a white employee, had left

his post without being relieved and received a two-day disciplinary layoff. However, Mr. Stanley convinced his supervisors that he left only because he mistakenly believed he had seen his replacement arrive, when in fact the replacement had not arrived. He also expressed remorse for his conduct and promised it would not happen again. (Def.'s Mot. Summ. J. , Seel Aff. ¶¶ 12-14.)

Mary-An Anderson, another white employee, received a three-week disciplinary layoff without pay and six months' probation for walking off the job on a Sunday morning. Ms. Anderson had previously told her supervisor, who was absent on the day in question, that she could not work on Sundays due to her religious convictions. After expressing remorse for her actions and promising to meet certain conditions in the future, Ms. Anderson was allowed to return to work. (Id.)

Following the Plaintiff's discharge on January 27, 1998, Plaintiff filed another grievance, asserting that he had been discharged for filing a grievance regarding Mr. Wells. [3] Pursuant to the collective bargaining agreement, the matter was referred to arbitration. After conducting a hearing on January 6, 1999, found Plaintiff guilty of violating company policy by leaving his post without being properly relieved. However, the arbitrator also found that under the circumstances, discharge was too severe a penalty, and ordered Plaintiff reinstated without back pay on April 15, 1999. [4] (Arb. Op. At 1, 11-15.)

Plaintiff also filed with the Equal Employment Opportunity Commission ("EEOC") on February 5, 1998, complaining of racial discrimination and retaliation by Defendant. Following its investigation, the EEOC

---

[3] Plaintiff filed a similar charge with the National Labor Relations Board ("NLRB"). This charge was deferred pending resolution of the union grievance.

[4] The NLRB subsequently dismissed Plaintiff's charge as a result of the arbitrator's award.

declined to pursue the matter further and issued Plaintiff a right-to-sue letter on December 8, 1999. [5]

After being reinstated, Plaintiff filed several additional grievances against Defendant, bases on "harassment and retaliation." Plaintiff asserted that he had been unfairly deprived of seniority after being reinstated that his supervisors had mistreated him, and that investigation of his previous grievances had been unfair, among other things. These grievances became the subject of several meetings, between Plaintiff and management in the summer of 1999.

At several of the grievance meetings, Plaintiff attempted to open the meeting with a religious invocation. [6] After one such incident, a management representative informed Plaintiff that he was free to play privately prior to his grievance meeting, but that open prayer in company forums would not be allowed. When Plaintiff attempted a similar invocation at the next meeting, the management representative terminated the meeting. Plaintiff filed another grievance in protest. [7]

In August 1999, Plaintiff was told by a supervisor that his production levels were low compared to others employees. Believing this to be unfair, Plaintiff filed another grievance. In October 1999, Plaintiff received a written warning regarding his level of absenteeism. Plaintiff filed another grievance, asserting that he was not given a verbal warning prior to receiving the written warning.

---

[5] Plaintiff originally filed suit in federal district court on February 10, 2000. The court dismissed that action without prejudice on August 17, 2000, for failure to assert that the Plaintiff had received a right-to-sue letter from the EEOC. The complaint in the present action filed August 25, 2000, cured this defect.

[6] According to Plaintiff, this invocation consisted of the statement, "I'd like to give honor to my Lord and Savior, Jesus Christ, for he is the power that made these proceedings today possible." (Pl.'s Dep. At 214, filed June 20, 2001.)

[7] The subject of this grievance was never made part of Plaintiff's EEOC charge. (Pl.'s Dep. Ezs. 3, 4, filed June 20, 2000

III. **DISCUSSION**

A. Standard of Review

Summary Judgment is appropriate when the pleadings and other evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. Proc. 56(c); Celotex Corp. v. Cartrett, 477 U.S. 317, 322-23, 106 S Ct. 2548, 2552 (1986). The essential question for the court's determination is whether the evidence "is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512 (1986). Where the nonmoving party fails to make a sufficient showing to establish an essential element of its case, summary judgment is proper because a "complete failure of proof" on an essential element renders all other facts immaterial. Celotex, 477 U.S. at 322-23, 106 S. Ct. at 2552.

B. **Analysis**

Plaintiff asserts that Defendant discriminated against him on the basis of his race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., 42 U.S.C. § 1981, and 42 U.S.C. § 1983, by filing to promote Plaintiff to the position given to Kevin Wells, discharging Plaintiff for leaving his post without being relieved, and retaliating against Plaintiff in various ways as a result of grievances he filed with the union. Defendant responds that Plaintiff has failed to establish a prima facie case of discrimination or retaliation because Plaintiff was not qualified for the position given to Mr. Wells and Plaintiff was appropriately disciplined for violating a clearly established plant rule.

At the outset, the court notes that Plaintiff may not rely on 42 U.S.C. § 1983 to advance his claims. Section 1983 provides a federal cause of action to those whose constitutional rights are violated by a state or local government actor. [8] As Defendant is a private

---

[8] See Monroe v. Pape, 365 U.S. 167, 172, 81 S. Ct. 473, 476 (1961) (noting that § 1983 targets those "who carry a badge of

employer, § 1983 dose not provide Plaintiff with a cause of action against Defendant.

To survive summary judgment on his remaining claims, Plaintiff may proceed in either of two ways. First, Plaintiff may present direct evidence that race was a determining factor in Defendant's employment decisions. See Equal Employment Opportunity Commission v. Northwest Structural Components, Inc. 822, F. Supp. 1218, 1219 (M.D.N.C. 1993). Alternatively, if Plaintiff is unable to present direct evidence of discrimination, Plaintiff may establish his case through circumstantial evidence, using the McDonnell Douglas burden-shifting scheme. [9] See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). Under this scheme, Plaintiff must first present evidence demonstrating a prima facie case of discrimination. See id. If Plaintiff succeeds in establishing a prima facie case, the burden of proof shifts to Defendant to articulate a legitimate, non-discriminatory reason for its actions. See id. Plaintiff then must be given the opportunity to show that Defendant's stated reasons are pretextual or a mere "coverup" for racially discriminatory action. See 411 U.S. at 804-05, 93 S. Ct. at 1825-26.

Plaintiff has asserted what essentially three distinct discrimination claims in this case: 1) failing to promote Plaintiff to a position filled by a white employee; 2) discharging Plaintiff and 3) retaliating against Plaintiff for Plaintiff's union grievances against Defendant.

1. **Discriminatory Failure to Promote**

---

authority off a State... whether they act in accordance with their authority or misuse it").

[9] The McDonnell Douglas burden-shifting scheme applies to both Title VII and § 1983 claims. See Patterson v. McLean Credit Union, 491 U.S. 164, 186, 109 S. Ct. 2363, 2377 (1989).

In order to establish a prima facie case of discriminatory failure to promote, Plaintiff must demonstrate the following: 1) Plaintiff is a member of a protected class; 2) Plaintiff applied for the position in question; 3) Plaintiff was qualified for the position in question; and 4) Plaintiff was rejected under circumstances giving rise to an inference of unlawful discrimination. See Carter v. Ball, 33 F.3d 450, 458 (4th Cir. 1994).

Beyond qualifying as a member of a protected class, Plaintiff has failed to establish any of the elements of a prima facie case of discriminatory failure to promote. First, Plaintiff never applied for the second pressman awarded to Kevin Wells, nor was he legally entitle to opportunity to do so.

The second pressman position was not an entr-level position, but the third position in the progression of jobs within the printing department. Althought it was Defendant's policy to post entry-level position internally so that current employees could receive preferential consideration for those jobs, this policy did not extend to non-entry level positions. [Def.'s Resp. Opp'n Pl.'s Mot. Order Compelling Disclosure or Disc., attachment to Def.'s Resp. Pl.'s Interrogs.] Thus, Defendant had no duty to post the second pressman job internally, and Plaintiff had no corresponding right to apply under company policy.

Secondly, even if Plaintiff had applied for the second pressman position, he was not qualified. Plaintiff worked as a sheeter, an entry-level position in the printing department, and had not been trained to operate the press. Mr. Wells, on the other hand, had received such training. Plaintiff has presented no evidence whatsoever that he was qualified for the position of second pressman.

Plaintiff's lack of qualifications makes it virtually impossible for him to demonstrate the fourth element of a prima case, that he was rejected for the position under circumstances giving rise to an inference of discrimination. The position was a skilled one requiring

training that Plaintiff did not have, and the position was eventually filled by a person who, unlike Plaintiff, had received such training. Plaintiff simply has presented no evidence that Defendant rejected him for discriminatory reasons or under questionable circumstances.

Plaintiff does assert that he assisted in training Mr. Wells for his new position and for that reason was just as qualified as Mr. Wells However, even talking this fact in the light most favorable to Plaintiff, the fact remains that Plaintiff was a sheeter and that the job of second pressman was not next in the line of progression within the printing department. Moreover, Defendant had no responsibility to open the job to Plaintiff or others in the sheeter position because the job of second pressman was not an entry-level position. Plaintii has failed to meet his burden of production on his claim of failure to promote.

2. **Discriminatory Discharge**

To establish a prima facie case of discriminatory discharge, Plaintiff must demonstrate that 1) Plaintiff is a member of a protected class; 2) Plaintiff was qualified for his job and was performing the job satisfactorily; 3) despite his qualifications and performance, Plaintiff was discharged; and 4) the position remained open to similarly qualified individuals after Plaintiff's discharge. See Carter, 33 F.3d at 458-59.

Plaintiff has made a partial showing of the elements required for a prima facie case of discriminatory discharge, but as before, his case ultimately falls short of what is required to survive summary judgment. Plaintiff has established that he is a member of a protected class, that he was qualified for the position of sheeter, and he was discharged. However, Plaintiff has failed to demonstrate that he was performing satisfactorily at the time of his discharge. The evidence shows that Plaintiff committed a serious offense by failing to stay at his post until properly relieved, in violation of collective bargaining agreement. (Arb. Op. At 12.) Moreover, a supervisor reminded Plaintiff of the rule only 24 hours before he committed

the violation, and Plaintiff's co-workers confirmed on the day of the violation that he could be terminated for such conduct.

Plaintiff argues that this violation should not be held against him for several reasons. First, Plaintiff alleges he was not told that his replacement would be absent the night of January 16, and thus Plaintiff was unaware that he was needed to work overtime, [10] However, Plaintiff was expressly warned the previous night that he would need to work overtime if his replacement did not report to work. Moreover, on the night of January 15, the last occasion on which Plaintiff was allowed to go home only after he asked for and received special permission to do so. Thus Plaintiff knew or should have known that he lacked the authority to make such a determination himself.

Plaintiff also asserts that the plant was not in continuous operations that night, and thus this machine did not need to be run during the third shift. Plaintiff presented no evidence supporting this assertion. It is uncontroverted that Plaintiff was allowed to go home the previous night only after supervisors evaluated his output and determined that Plaintiff's machine was not needed during the third shift that night, at the same time, Plaintiff's supervisor reminded him that in the future, he would be required to stay over if his replacement had not arrived. (Id. At 4-5.)

Even assuming that Plaintiff had established a prima facie case, Defendant has articulated a legitimate, non-discriminatory reason for its action. See McDonnell Douglas, 411 U.S. at 802, 93 S. Ct. at 1824. Defendant disciplined Plaintiff for violating a clearly-established plant rule, just as it had done for other employees in the past.

---

[10] Plaintiff also points to the fact that his shift supervisor told him to "have a good weekend" as he left the plant on the night of January 16. However, the shift supervisor was in the office and could not see that Plaintiff's replacement was not at his post.

Plaintiff, however, argues that Defendant's explanation is merely a pretext for discrimination, see id., 411 U.S. at 804, 93 S. Ct. at 1825, because other employees who committed similar violations were given less serious sanctions than termination. In effect, Plaintiff alleges not only that Defendant's reasons are pretextual, but that the disparate treatment of Plaintiff as compared to those employees was itself racially discriminatory.

To establish such a claim of "discriminatory disciplines", the following elements must be shown under the McDonnell Douglas burden-shifting scheme: 1) Plaintiff is a member of a protected class; 2) the prohibited conduct in which Plaintiff engaged was comparable in seriousness to the misconduct of employee outside the protected class; and 3) the disciplinary measures enforced against Plaintiff were more severe that those enforced against those other employees. See Cook v. CSX Transp. Corp., 988 F.2d 507, 511 (4th Cir. 1993).

While the evidence does suggest that several other employees received less severe disciplinary sanctions that Plaintiff for walking off the job, Defendant has articulated legitimate, non-discriminatory reasons for the differences. See id. Tony Stanley, a white employee, was given a two-day disciplinary layoff. However, unlike Plaintiff, Mr. Stanley convinced his supervisors that he left his post without relief by mistake and promised it would not happen again. (Def. 's Mot. Summ. J., Seel Aff. ¶¶ 12-13.) Mary –An Anderson, also white, was given a three-week disciplinary layoff and six months' probation; however, she too expressed regret for her actions and was allowed to return to work only after agreeing to certain conditions. (Id. ¶ 12, 14.) By contrast, Plaintiff never expressed remose for his actions and never agreed to obey the rule in the future. (Id. ¶ 12.) Therefore, Plaintiff has failed to meet his burden on either a discriminatory discharge or a discriminatory discipline claim.

3. Retaliation

To establish a prima facie case of retaliation, Plaintiff must demonstrate the following: 1) Plaintiff engaged in some protected activity; 20 Plaintiff's employer took adverse employment action against Plaintiff; and 3) a causal connection existed between Plaintiff's protected activity and the employer's adverse action. See Carter, 33 F.3d at 460. Although the temporal proximity of Plaintiff's protected action and the employer's adverse action can be indirect proof of a causal nexus, "'mere knowledge on the part of an employer that an employee... has filed a discrimination charge is not sufficient evidence of retaliation to counter substantial evidence of legitimate reason' "for adverse action against Plaintiff. Id. (quoting Williams v. Ceberonics, Inc., 871 F. 2d 542, 457 (4th Cir. 1989).

Plaintiff claims that his discharge on January 27, 1998, was in retaliation for the grievance he filed on January 5, 1998, regarding the hiring of Kevin Wells. [11] Plaintiff has presented no evidence linking these two events other than their temporal proximity.

Defendant however has presented substantial evidence of a legitimate reason for Plaintiff's discharge, as described above. Even assuming that Plaintiff met his burden of establishing a prima facie case by virtue of the temporal proximity of these events, Plaintiff has presented insufficient, evidence to rebut Defendant's legitimate reason. See id.

Plaintiff also alleges other forms of adverse treatment, including loss of his seniority after being reinstated, unfair investigations of his grievances by management, a supervisor's tone of voice being "out of order" on a given occasion, a supervisor's warning that Plaintiff's production rate was low, and a written warning for excessive absenteeism. (Comp. ¶¶ 16-19.) Although Plaintiff filed grievance in response to these acts, he has presented no direct evidence suggesting a causal nexus between these adverse actions and any

---

[11] Plaintiff's EEOC charge was not filed until after his discharge, and thus is not part of Plaintiff's claim of retaliation.

grievance filed. Indeed, the record reflects that most of Plaintiff's grievances were filed in response to various acts of Defendant, not the other way around.

Additionally, Plaintiff asserts that Defendant retaliated against him by terminating one of Plaintiff's grievance meetings after Plaintiff attempted to give a religious invocation, in violation of Plaintiff's First Amendment rights. However, Plaintiff is barred from pursuing this claim because he did not assert it in his EEOC charge or later amend his charge to reflect this claim. See Leskinen v. Utz Quality Foods, Inc. 30 F. Supp. 2d 530, 533 (D. Md. 1998) (only claims stated in original charge, reasonably investigation of original complaint may be raised in subsequent Title VII suit), aff'd 165 F. 3d 911 (4th Cir. 1998).

IV. CONCLUSION

For the reasons stated herein, the court will grant Defendant's Motion for Summary Judgment on each of Plaintiff's claims. A judgment in accordance with this memorandum opinion shall be filed contemporaneously herewith.

This the 18th day of December 2001.

"s /William L. Osteen "
United States District Judge

APPENDIX C

SENIORITY LISY	05-Mar-98 11:43 AM				
GREENSBORO FOLDING					
92 NAME	DATE HIRED	Year of SERVICE	Class-ification	Class Date	DEPT
Mean, J.W.	24-Jul-72	25	Feeder Operator	20-Oct-76	Print-ing
Cunningham,S.B.	16-May-77	20	2nd Press Oper IP2	01-Jun-97	Print-ing
Moyer, G.E.	02-Oct-98	10	Feeder Operator IP2	18-Aug-97	Print-Ing
Jone, P. E.	31-Oct-91	6	2nd Press Oper IP2	28-Jul-97	Print-Ing
House Morehead, E.L.	05-Apr-95	2	2nd Press OperIP2	28-Jul-97	Print-Ing
Harris, W.D.	28-Apr-96	1	Feeder Oper IP2	18-Aug-97	Print-ing
Wells,K.B.	16-Feb-98	0	2nd Press Oper IP3	16-Feb-98	Print-ing

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:00-CV-00814

~~~~~~

ELDER LEWIS BANKS,
Plaintiff,

AFFIDAVIT OF
SHAYNE SUFFERN

v.

JEFFERSON SMURFIT CORP.
Defendant,

---

1. My name is Shayne Suffern employed by Smurfit-Stone at the Labor Division on Norwalk St. I was formerly employed at the folding carton plant on East Market St. I have been working for Smurfit-Stone for about Twelve years. Five years at the folding carton division on East Market St. and I am currently going on my seventh year at the plant on Norwalk St. My current position is 2nd pressman I have been doing that for seven years now.

2. The time that Kevin Wells and Jimmy Emmerson had the altercation I was not present, but when I return to the plant. I got the information for the plant manager Dennis Westson and he explained to me and told all of us that any kind of fighting in the facility will not be tolerated and he terminated Jimmy Emmerson and he also terminated Kevin Wells at the time that they was fighting. I knew both of the men that were in the altercation.
~~~~~~

3. Kevin Wells worked at the plant at the time for about one to three years his position was a general worker which was floor help that's what they classified it. His duties were just to load the paper in the press at the feeder end. His responsibility were feeder responsibility, that basically consist of general help. Jimmy Emmerson had the same position that Wells had doing that time. Floor help assist with everything but they are not classified as 2nd pressman.

4. Like I said I have no knowledge of Kevin Wells having 2nd pressman or lead pressman experience at the facility that I work at. Some of his coworkers told me at the time said "he was not even competent enough" and that was there personal opinion of him.

5. Kevin Wells doing the time he was employed with the company on Norwalk St. he was dating Brenda Bunn. Brenda Bunn was the daughter of one of the pressman at the plant on East Market St. and his name is Jimmy Bunn. What I personal fill that he had something to do with Kevin Wells of getting hired and getting the position that he is holding today Mr. Bunn's daughter and Kevin Wells has a baby together. I fill if you get fired from one facility you shouldn't be able to seek employment with same company.

6. My five years at the plant on Market St. my gold was to become a lead pressman. Doing that time, I don't know the number of the people that was in front of me but they had more seniority then me. So I see for me to move up the ladder it was going to take a period of time. That's why I took the opportunity for Norwalk St. because there was

openings for feeders and opportunity to become a 2nd pressman and a lead person. I did not want to be the lowest person on the totem pole what I am trying to say is that my experience on Market St. was that you have to have seniority in order to get the position that Kevin Wells got now. It should not have been that easy it took me five years just to get to a 2nd pressman. I was over there for five years and still did not get to the position that Kevin Wells has now.

This is my statement Mr. Shayen Suffern, for this Affidavit dated 29 of June 2001.

"s/ Shayne Suffern "
Mr. Shayne Suffern

Sworn to and subscribed before me
This 29th day of June, 2001.

" s/ Janice H. Rigg "
Notary Public

My commission Expires: 05-25-03,

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:00-CV-00814

~~~~~~

ELDER LEWIS BANKS
Plaintiff,

v.

AFFIDAVITOF
JOHN MEANS

JEFFERSON SMURFIT CORP.
Defendant,

---

1. My name is John Means Jr. I am employed at Smurfit-Stone Corp. I have been employed there for Twenty-nine (29) years. My classification is Utility person and I hold the office of Vice President of local union 465-S.

2. I do recall from a scale from 1-10, I will say we had 10 meeting with Elder Lewis Banks. He always opening his meeting with what I call giving thanks to god, but he never did ask anyone for prey. The last meeting I was in with Mr. Banks he made his opening statement and George Holtz, the plant manager canceled the meeting stating he was praying. I don't think it was right because Elder Banks was not praying.

3. When Mr. Wells, came inside the plant as a 2nd pressman he had to be trained. They made a statement that it was no difference in a 2nd press paper press then a forward type press. Now Kevin Wells came in from the Label plant on Norwalk St. running paper I will say about 6 to 8 caliber board and we was running 20 caliber board. Kevin Wells was not qualified to be a 2nd pressman in this plant because he had to be trained.
~~~~~~

I have read this statement consisting of 2 pages, including this page, I fully understand its contents and certify that the foregoing is true and correct.

" s/ John Means "
Mr. John Means

8-16-01
Date

Sworn to and subscribed before me
This 16 day of August 2001.

" s/ J. Anderson "
Notary Public

My commission Expires: 02/10/03 ,

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

1:00-CV-00814

ELDER LEWIS BANKS
Plaintiff,

v.

MOYER

AFFIDAVIT OF GEORGE MOYER

JEFFERSON SMURFIT CORP.
Defendant,

I, George Elvis Moyer, being first duly upon my oath, hereby state as follow:

My name is George Elvis Moyer, I am a Black American Citizen of the United States and live in North Carolina I have been residing here in NC all my life. I have been employed with Smurfit-Stone Corp. aince 1987. I have already filed a complaint of Discrimination concerning Kevin Wells and other white employees, Smurfit-Stone has discriminated against other Black employees in the plant.

They hired Kevin Wells, a white male in 1998. He was hired outside of the company in the position of a 2nd pressman, Kevin did not have the qualification for this position. I was a pressman, doing the job for about six (6) hours a day or more. I was inline for the job normally when the company regulates the next man for the job. Not only did they move Kevin Wells in my place they

also placed over several other Black employees. Some have been doing the job, probably, I am going to estimate some of the different ones, from 5 to 20 years. Kevin Wells had no experience and I know this because I worked with him. I also know this because I talked with him and other people where he worked. They too, said he did not have the experience.

Because everybody had to train him for everything and the supervisors took there time and worked with Kevin Wells everyday and they showed him more then they showed any Black person. Now not only Kevin Wells, they continue to do wrong against the Blacks in the department, because the printing Dept. is the higher paying dept. in the plant. Smurfit-Stone, in my opinon continue to keep the Black people down and moving all the white employees up with higher pay. I noticed this every since I have been here, you can asked anybody in the plant Black or White.

I filed a Grievance concerning Kevin Wells, that he should not be in front of me and to put him back in his rightful place. The company gave me back pay from the time they had hired Kevin Wells, and said it was a mistake. To prove that it was not a mistake, come three months later the company turned right around and hired another white person name Lason and place him right over me with more pay, they did the same thing more money. That's how Smurfit-Stone does the Black employees. Then when the company saw I wouldn't stop they switch Jason back behind me. I know it is discrimination in the plant. Then they hired Frank or Dale, a white guy and the company place him before everybody else again. I was next to go up for pressman and so Pharlina and I filed a grievance.

About that time we had a meeting and Holtz, Seels, and the union member was in it.

They said OK, we are going to put you in as a pressman, but we are going to keep Dale where he is. They continue to do that when a Black person moves up because they have discriminated against them. If I had not started filing grievance in the printing department no Blacks would have gotten any advancements. When I start filing grievances, is when they start promoting Blacks in the printing Dept.

Not only do they discriminating against black employees by giving whites higher paying positions, but also with time cards. Management would change white employees time to make it seem as if they where on time, but in reality the white employees would have been late.

Well, at one Christmas Dinner, a Mr. Smith Johnson, a white supervisor had asked Charles Hall to pray or Bless the food, he turn it down. Then Mr. Johnson asked me and I prayed over the food. Mr. Johnson asked Mr. Hall on another occasion.

I have read this statement consisting of 2 pages, including this page. I fully understand its contents and certify that the foregoing is true and correct.

" s/ *George Elvis Moyer* " 8/9/01
George Elvis Moyer

Sworn to and subscribed before me
This 9th day of August 2001.

"s/ Janice H. Rigg "
Notary Public

My commission Expires: 08-25-03

APPENDIX G

Graphic Communications Union Local No. 465-S
Greensboro, North Carolina
GRIEVANCE FORM

NAME Rev. Lewis Banks DATE 1/5/98

ADDRESS 3204 Anvil Pl.

CITY Greensboro STATE NC ZIP CODE 27407

NAME OF COMPANY Jefferson Smurfit

CLASSIFICATION Sheeter Operator SHIFT 2nd
Clock No.

Describe clearly and in detail your grievance and relief sought. This form is to be made in triplicate (3), When complete give first and second copy to your shop steward and keep this copy. Shop steward will give first copy to Company and keep second copy for Union file.

Grievance: See attached sheet:

Relief Sought:

"s/ Rev. Lewis Banks "
Employee Signature

Steward's Comment:

Steward Signature

Company's Answer:

Supervisor's Signature

GRIEVANCE

Section 10, *Job Bidding Procedure,*

[a] If at any time there is a permanent vacancy to be filled in the bottom job classification of a line of progression or in a job classification not in a line of a progression, such job shall be posted for bid for a period of forty-eight (48) hours. Monday through Friday.

[b] During such time any employee who desires to be considered for such posted job classification, shall bid therefore by signing the required forms.

[d] Employees bidding for the posted job will be reviewed and such job will be filled on the basis of seniority consistent with Section 3, of this Article.

Section 3. Promotions.

In promotions where fitness and ability between employees are relative equal, seniority shall prevail. The company may require employees to accept promotion in higher job classifications in accordance with fitness, ability and seniority as defined in this Article and Section.

Relief Sought

The company should abide by the Agreement and take Kevin Wells, off of the printing press as a second pressman trainee. If Kevin Wells, should remain at Jefferson Smurfit, he should start as a new employee, with no seniority.

Instead of hiring someone from another plant that had been previously terminated, the company should post all positions that are available to give the in house employees a chance to bid on the position. Because the effect of hiring someone outside the plant in a higher position stop me from achieving at Jefferson Smurfit.

APPENDIX H

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974: See Privacy Act Statement before completing this form.

Agency: [ ] FEPA, [**X**] EEOC Charge Number: 145980197

_____ and

EEOC

State or local Agency, if any

Name *(Indicate Mr. Ms., Mrs.}* **Home** Telephone (Include area Code)

Rev. Lewis Banks (336) 852-0638

1684

STREET ADDRESS **CITY, STATE, ZIP CODE** **DATE OF BIRTH**

3204 Anvil Place, Greensboro, NC 27407 04/01/59

NAME IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more then one list below).*

NAME **NUMBER OF EMPLOYEES** **TELEPHONE** (Include area code)

Jefferson Smurfit Corp. Cat B (101-200) (919) 273-8201

Container,

STREET ADDRSS

COUNTY

Corporation Of America, 2600 East Market Street, Greensboro, NC 27 081

CAUSE OF DISCRIMINATION BASED ON *(Check Appropriate box(s)):*

[X] RACE [ ] COLOR [ ] SEX [ ] RELIGION [ ] NATIONAL ORIGIN

[X] RETALIATION [ ] AGE [ ] DISABILITY [ ] OTHER *(Specify)*.

DATE DISCRIMINATION TOOK PLACE

EARLIST	*LASTEST*
01/27/98	*01/27/98*

[ ] CONTINUING ACTION

THE PARTICULARS ARE (*If additional space is needed, attach extra sheet(s)*).

I was discharge on January 27, 1998 from the position as Sheeter Operator while under a suspension of January 19, 1998. I believe that my discharge was in retaliation because I filed a grievance on January 5, 1998, complaining about a white employee retaining his seniority when he was hired on December 15, 1997, from another company facility.

According to the company policy, this employee was not suppose to retain his seniority because he was fired from the company. Bringing in this person with his seniority, place him over me and other Blacks who are next in line from promotions. I had been employed since December 13, 1996.

By letter of January 27, 1998, I was informed by Randy Hearn, Plant Manager, that I was discharged, effective immediately, for walking off the job on January 16, 1998 without being properly relieved. I clocked out at the end of my shift with the permission of the second shift supervisor.

I believe I was discriminated against because of my race (Black) and in retaliation for having complained of employment practices in violation of Title VII of the Civil Rights Act. Of 1964, as amended.

[ ] I want charge filed with the EEOC and the State and local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperation fully with time in the processing of my charge in accordance with their procedures.

NOTARY – (When *necessary for State and Local Requirement(s)*)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, Information and belief.

I declare under penalty of perjury that the forgoing is true and correct.

1-5-98 "s/Rev. Lewis Banks" **SIGNATURE OF**

COMPLAINANT
Date **Charging Party** *(Signature)* **SUBSCRIBED**

AND SWORN TO BEFORE WE THIS DATE
(Day, month, and year)

STATE OF NORTH CAROLINA , **CASE NAME** Banks vs Jefferson S.,

CITY/COUNTY OF Greensboro/Guilford, **CASE NUMBER** 145980197 ,

AFFIDAVIT

I, Lewis Banks , being first duly sworn upon my oath
(Name) affirm and hereby say:

I have given assurances by a Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, Affidavit may be subject to disclosure in accordance with Agency policy.

I am 38 **, years of age, my gender is** male **and my**
(sex)

racial identity is Black ,
(race)

I reside at 3204 Anvil Place ,
(Number/Street)

City of Greensboro , **County of** Guilford ,
State of NC , **Zip Code** 27407 ,
My telephone number is *(Including area code)* 336-852-0638 ,

My statement concerns Jefferson Smurfit Corp./ Container,
(Name of Union/Company/Agency
which is located at Corporation of America 2600 East Market steet
(Number/Street)
in Greensboro NC 27407 ,
(City) *(State)* *(Zip)*
My job classification is (If applicable) Sheeter Operator ,
(job title)

My immediate supervisor is (If applicable) Leonard Luskawl,
(Name)
Second Shift Supervisor,
(job title)

I was discharged on January 27, 1998 from the position as sheeter Operator while under a of January 19, 1998. I also believe that my discharge was in retaliation because I complained about a white employee retaining his seniority when he was hirer after he was fired from another company facility. Because this person retained his seniority, it placed him over me and other Blacks next in line for promotion.

By letter of January 27, 1998, I was informed by Randy Hearn, Plant Manager, that I was discharged, effective immediately for walking off the job, Friday, January 16, 1998, without being properly relieved.

I believe that I was discriminated against because of my race (Black) in violation of Title VII of the Civil Rights Act of 1964, as amended.

Issue: Discharge

On January 16, 1998, I was informed aat the end of my shift by my supervisor, Ludswaki and the third shift supervisor, Mark (LNU) that Teddy Johnson, an

employee was not coming in. I told the supervisor that I could not stay over this time, that I had to go. When I completed my shift, Mark (LNU), third shift supervisor, looked around and said "since we are caught up, you can go". I understood this to mean that I could clock-out and didn't have to stay over. I said to Mark (LNU), "thank you", dropped off my paper work and clocked-out.

My next working day, January 29, 2998, I was suspended for not staying over at the end of my shift on January 16, 1998, While out on a suspension, I was informed by letter of January 27, 1998 from the Plant Manager, Randy Hearn, that I was discharged.

Comparative Information

Mary Ann Anderson (white) clocked out in the middle of her shift, without permission. For her actions, she was placed on a three-week suspension. She was reinstated from her suspension.

Tony StaNley (white) walked off the job and was not suspended nor discharged. His walking off the job, stopped production on his line. I completed my shift, but could not stay over for the next shift to fill in for the employee who could not come.

Issue: Retaliation

I also believe that my discharge was in retaliation because I filed a grievance on January 5, 1998, complaining about a white employee, Kevin Wells retaining his seniority when he was hired at this facility. Bring in Wells with his seniority placed him over me and two other Black males: George Moyer and Douglas Harris, who are next in line for promotion as Second Pressman. According to the collective bargaining agreement. Wells should not have retained his seniority because he was discharged from another Respondent facility.

I had no disciplines until after I complained about Kevin Wells of January 5, 1998. Then I was suspended on January 19, 1998 for leaving.

** Text Continued on Attached Sheet(s) ***

I have read and had an opportunity to correct this Affidavit consisting of ___ handwritten[ ] typed [ ] pages and swear that these facts are true and correct to the best of my knowledge and belief.

"s/ *Rev. Lewis Banks* "

Subscribed and sworn to before me
This 5 day of Febraury 1998

"s/ Pearl J. Logan "

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE
(*Conciliation Failure*)

To: Lewis Banks
EMPLOYMENT OPP.
COMM.
GREENSBORO, NC 27407

From: EQUAL
3204 ANVIL PLACE
Greensboro, Local
Office,
801 Summit Avenue
Greensboro, NC 27405-
7813

[ ] *On behalf of a person aggrieved whose identify is* CONFINDENTIAL
(29 C.F.R. 1601.7(a)

Charge Number	*EEOC Representative*	*Telephone Number*
145980197	Patricia B. Fuller	(336) 333-5174

TO THE PERSON AGGRIEVED:

This Notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violations of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief for you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

****NOTICE OF SUIT RIGHTS****
(See the additional information attached to this form)

TITLE VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law bases on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS form your receipt of this Notice;** otherwise, your right to sue based on this charge will be lost. (*The time limit for filing suit bases on a state claim may be different.*)

Equal Pay Act (EPA): EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. **This means that backpay due for any violations that occurred more that 2 years (3 years) before you file suit may not be collectible.**

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

" s/Reuben Daniels, Jr "
Reuben Daniels, Jr Act. Dist. Dir.

Enclosure(s)

Cc; JEFFERSON SMURFIT CORP.
CORPORATION OF AMERICA
2600 EAST MARKET STREET
GREENSBORO, NC 27406

APPENDIX I

Agreement

by and between
Container Corporation of America
an affiliate of
Jefferson Smurfit Corporation
and the
Graphic Communication Union
Local 465-S

NOVEMBER 15, 1994
NOVEMBER 15,1999

Section 10, *Job Bidding Procedure,*

(a) If at any time there is a permanent vacancy to be filled in the bottom job classification of a line of progression or in a job classification not in a line of a progression, such job shall be posted for bid for a period of forty-eight (48) hours. Monday through Friday.

(b) During such time any employee who desires to be considered for such posted job classification, shall bid therefore by signing the required forms.

(c) Until a permanent assignment is made, such job may be filled by the Company on a temporary basis.

(d) Employees bidding for the posted job will be reviewed and such job will be filled on the basis of seniority consistent with Section 3, of this Article.

(e) In the event that it is determined that none of the bidders have the necessary fitness and ability to satisfactorily do the required work, the Company is free to otherwise fill such job opening.

(f) Employee may bid on a job paying a higher rate than the rate of his or her assigned classification without restriction, however, no employee will be permitted to bid on a job classification carrying the same rate as his or her job classification until such employee shall have at least six (6) months seniority, after which, such employee may bid laterally no more than once in any six (6) months period. An employee may be permitted to bid on lower rate jobs in a line of progression where the rate of the highest job classification in such line of progression is higher that the rate of the highest job classification in the employee's present line of progression. In addition, an employee may be permitted to bid on lower rate jobs when it has been determined that his or her condition prevents the satisfactory performance of the duties of his or her present job.

(g) If an employee is absent for justifiable cause during a job posting period, a bid may be filled on his or her behalf by a Union steward or officer, if such Union steward or officer has been authorized to do by the employee. Such employee will be considered with other bidders provided he or she returns to work within two (2) weeks of the date of the posting.

(h) The Company does agree to allow employees being paid equal to or less than the entry level rate of the Shipping and Process Information Department to bid into those departments when openings occur.

Agreement by and between
Smurfit-Stone Corp.
And the
Graphic Communications Union Local 465-S

November 15, 1994 to November 15, 1999

PRINTING DEPARTMENT PROGRESSION

Press Operator
2nd Press Operator
Feeder Operator
Servicer
Sheeter

Each level subject to test of fitness, ability and seniority.

CUTTING DEPARTMENT PROGRESSION

Press Operator
Pre-Press Servicer
Baler

Each level subject to test of fitness, ability and seniority.

FINISHING DEPARTMENT PROGRESSION

Finishing Specialist
Operator
Servicer
Bundler
Casepacker
Feeder
Catcher

Each level subject to test of fitness, ability and seniority.

APPENDIX J

Agreement by and between Smurfit-Stone Corp. And the Graphic Communications Union Local 465-S

November 15, 1994 to November 15, 1999

Exhibit D
Miscellaneous Issues

3. The Company will make every effectively to minimize unscheduled overtime, however, those employees in continuous operation are required to remain on the job until properly relieved. The Company will endeavor to find a qualified replacement in the shortest possible time for employees who are forced to work unscheduled overtime.

APPENDIX K

Jefferson Smurfit Corporation

Telphone (919) 273-8201 **Folding Carton**
Divisions
Fax (919) 273-7375 2600 E. Market
Street
Greensboro,
NC, 27401

January 27, 1998

Mr. Lewis Banks
3204 Anvil Place
Greensboro, NC. 27406

Dear Lewis,

I have completed my investigation of your suspension for walking off the job Friday night., January 16, 1998 without being properly relieved. According to the Union Agreement under Exhibit D Miscellaneous number 3 it is written, "employees in continuous operation are required to remain on the job until properly relieved". You were told the night before by two supervisors that you could lose your job if you left before you were relieved. This is not a situation of misunderstanding the contract language because you tried to leave the night before without being relieved. The fact that you left after you were told you could not leave until your replacement arrived, makes your violation of the contract premeditated and willful. You are thereby terminated effective today.

You are referred to article 17 of our current labor agreement, "If any employee involved desires to file a grievance, he or she must submit it within 5 working days from the time of discharge, suspension, or written reprimand".

"s/ Randy M. Hearns "
Randy M. Hearns
Plant Manager

Cc: John Means
Human Resources

APPENDIX L

Graphic Communications Union Local No. 465-S
Greensboro, North Carolina
GRIEVANCE FORM

NAME Rev. Lewis Banks DATE 1/29/98

ADDRESS 3204 Anvil Pl.

CITY Greensboro STATE NC ZIP CODE 27407

NAME OF COMPANY Jefferson Smurfit

CLASSIFICATION Sheeter Operator SHIFT 2nd Clock No.

Describe clearly and in detail your grievance and relief sought. This form is to be made in triplicate (3), When complete give first and second copy to your shop steward and keep this copy. Shop steward will give first copy to Company and keep second copy for Union file.

Grievance: See attached sheet:
TERMINATED for DISCRIMINATION, I Lewis Banks was discriminated against with disparate treatment because of my race.

Relief Sought:

"s/ Rev. Lewis Banks"
Employee Signature

Steward's Comment:

Steward Signature

Company's Answer:

Supervisor's Signature

Jan. 29, 1998

To Whom It May Concern:

On 29 of Jan. I, Lewis Banks was inform that I was terminated from Jefferson Smurfit Co., due to Exhibit D-3. I, Lewis Banks, did not receive the proper Objectives of the ALT actions. But for the white employee Maryann, they followed the ALT actions. Maryann's case was more serious than mines. She, not only told the supervisor that she was going to clock-out, she did. When Mary ann (the white employee) clocked-out she stoped production for the remaining of that shift. I, Lewis Banks, did not stop production. I, Lewis Banks, did not tell my supervisor that I am going to clock-out after he told me not to. The white employee was reinstated after her three days suspension. I, Lewis Banks was terminated after eight days of suspension.

I, Lewis Banks was discriminated against with disparate treatment because of my race

RELIEF SOUGHT

1. Reinstatement
2. Back Pay
3. Retroactive Seniority
4. No points added for time loss because of suspension

"s/ *LB* "

APPENDIX M

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA UNEMPLOYMENT INSURANCE
DIVISION ADJUDICATOR UNIT
P.O. BOX 25903, RALEIGH, NC 27611

DETERMINATION BY ADJUDICATOR

DOCKET NO. 16789
S.S. No. 240-98-2333

CLAIMANT	EMPLOYER
Lewis H. Banks	Jefferson Smurfit Corporation
3204 Anvil place	C/O James E. Frick
Greensboro, NC 27407-6739	Post Office Box 283
	SAINT LOUIS, MO. 63166-0283

DETERMINATION

Claimant is disqualified for benefits beginning 1-25-98 and continuing until he qualifies for benefits in accordance with the applicable provisions of the Employment Security Law.

REASON

Claimant last worked for Jefferson Smurfit on 1-16-98. Claimant filed an NIC Claim effective 1-25-98, which has been continued through 2-14-98. The Claimant did participate in the scheduled fact finding interview. The employer did provide timely separation information.

Claimant was separated from this job due to violation of company policy. Claimant was warned prior to termination. Claimant left work without being properly relieved.

CONCLUSION:

N.C.G.S. 96-14(2) provides an individual shall be disqualified for benefits for the duration of his unemployment if it is determined by the Commission such individual is unemployed because he was discharged for misconduct.

Based on the foregoing, it is concluded claimant was discharged for benefits for connected with the work.

Judith A. Monroe
Adjudicator

Determination Mailed: 02/25/1998
Appeal Rights Expire: 03/11/1998

Appeal Rights:

This determination will become final unless an appeal by the aggrieved party is filed on or before the Appeal Rights Expiration date. The appeal may be delivered to any office of the Commission or mailed to the Adjudicator at the address shown above. For additional information, refer to the enclosed PROCEDURESS FOR APPEALING AN ADJUDICATOR" DETERMINATION pamphlet.

APPENDIX N

Jefferson Smurfit Corporation

Telphone (919) 273-8201 **Folding Carton Divisions**
Fax (919) 273-7375 2600 E. Market Street
Greensboro, NC, 27401

March 4, 1998

Mr. Doug Martin
President GCU
Local 465-s
Greensboro, NC

Subj: Lewis Banks 3rd step grievance answer

Dear Mr. Martin

After full consideration and further investigation into the termination of Mr. Banks, I can find no reason to support Mr. Banks' charge that his termination was a result of discrimination due to his race

Mr. Banks was terminated in accordance with the current plant rules and labor agreement after he shut down his equipment and left the job without being properly relieved. A similar incident the previous evening in which Mr. Banks was allowed to leave had resulted in discussions with him that could leave no misunderstanding of this rule. In addition, Lewis' comments that when he came to work on Friday 1/16/98 someone told him he was being "setup" and would be terminated for the incident on Thursday made him even more aware of the significance of the rule. Lewis discussed the situation with at least one co worker and received very clear advice that he could be terminated for leaving without being properly relieved. However, on that same evening he made no effort to stay or request approval from his supervisor to leave, nor did

he even notify his supervisor that his relief had not reported to work.

Lewis' contention that he had no responsibility to stay and it is solely up to the supervisor to ask him to do so is directly opposite of the contract language and past practice. Supervisors comments of "have a great weekend" made in the office wrer not permission to leave, as the supervisors had no idea that Lewis, relief had failed to report to work.

Previous incidents of violation of this rule have been dealt with severely. Mary Ann Anderson was suspended pending investigation and ultimately reinstated with a three week suspension and put on probation for another 6 months. Taken into consideration in our decision not to terminate in that case were the facts that Mary Ann was a fourteen year employee and had informed her temporary leadperson that she would only work 4 hours on the Saturday evening in question. The leadperson did not act on this information and Mary Ann ultimately left her machine and went home due to her religious conviction that she must not work on her Sabbath. In the case of Tony Stanley, also a 14 year employee, Tony successfully convinced the company that he though he had seen his relief in the building or he would never have left. In such a case where a clear misunderstanding has warranted and Mr. Stanley received only a short suspension and written warning in his file.

By contrast, Lewis Banks, an employee of just one year, clearly knew the ramifications of his actions (as a result of the incident the previous evening), but apparently decided to challenge the authority of this well established work rule by shutting down his machine and going home.

Besides being a violation of company rules and our labor contract, behavior of this type jeopardizes the continued operation of our business and our ability to deliver product to our customer. It clearly cannot be tolerated and this grievance is therefore denied.

"s/ *James Seel*"
James Seel
General Manager

Cc: Randy Hearns-JSC
Conja Ware-JSC

APPENDIX O

Arbitration Proceedings Transcript

RANDY HEARNS

BEING CROSS EXAMINATION
BY THE
UNION ATTORNEY
MICHAEL OKUN

Taken Wednesday, January 6, 1999

****

Beginning on page 200(15)-266,
Concerning the meeting we had Jan. 22, 1998, and how the Grievant asked Mr. Hearns, that did anyone check the time log sheet because the Grievant had informed Mr. Hearns, that the supervisor allowed Elder Banks to Clock-out. And we touch basic about Mary Ann Anderson, Tony Stanley, and Danna Cobbs, similarity

Page
220
[15]. **Q.** Okay, Now, in this Anderson case I'm
[16]. Correct, aren't I, that in that case she was told
[17]. before she went home you cannot go home tonight,
[18]. Correct? I'm-didn't George Schultz tell her
[19]. Before she went home do not go home or you can be
[20]. disciplined?
[21]. **A.** To-to my knowledge of the conversation was
[22]. George told her if you go home now that will be
[23]. Walking off the job and you can be suspended up to
[24]. a discharge.
[25]. **Q. Okay,** So she was warned of exactly what she

221
[1]. was doing?
[2]. **A.** That's right.
[3]. **Q.** And the-and later wasn't that-was that

[4]. Considered by all-didn't she actually disobey an
[5]. Order?
[6]. **A.** I-I don't take that as disobeying an
[7]. Order. I take it as if you do this then you will be
[8]. suspended up to discharge.
[9]. **Q.** I don't know whether you're familiar with
[10]. This or not this is a-are you familiar with
[11]. This discipline **that she received?**
[12]. **A.** Yes, I am.
[13]. **Q.** Okay, Now, doesn't it say (reading) you were
[14]. Instructed by me-"capital"-not to leave the
[15]. Plant and you were needed to work at night until
[16]. 7:00 a.m.?
[17]. **A.** That's right.
[18]. **Q.** So she was instructed not to go home and she
[19]. went home, correct?
[20]. **A.** That was the instruction, yes.
[21]. **Q.** That's correct, isn't it correct that in
[22]. Your investigation there was a disagreement between
[23[. her and schultz as to what the understanding was in
[24]. the past about what she should do?
[25]. **Mr. Hanna:** Is this truly

222

[1]. Relevant?
[2]. **Mr. Okun:** Yeah, I mean-
[3]. There's been some testimony about how
[4]. Harmful Mr. Banks' going home is and here we've got
[5]. An employee who was told do not go home and she
[6]. went home.
[7]. By Mr. Okun:
[8]. **Q.** And I'm asking you isn't it true that-
[9]. **The Arbitrator**: All right.
[10]. Relevancy is in the eyes of the beholder in this
[11]. Instance, If he thinks this is situation where
[12]. as part of the Union's argument this grievant was
[13]. treated differently then Ms. Anderson, he can
[14]. pursue it. Go ahead.
[15]. **BY MR. OKUN**:
[16]. **Q**. Do you recall that in your investigation of
[17]. This case she said George had never told her
[18]. Something and George said, yes, I did. Do you
[19]. Recall that?
[20]. **A**. I don't recall any deinal-
[21]. **Q**. That's possible?
[22]. **A**. -from Mari-An.

[23]. **Q**. Okay. All right, Isn't it correct that she
[24]. Had been suspended previously for two days for the
[25]. Same thing or a similar thing?

223

[1]. **A**. Not that I remember.
[2]. **Q**. Let me show show you another exhibit.
[3]. MR. OKUN: I'm not gonna, mark it
[4]. Now because I assume –
[5]. MR. HANNA: May I see that first,
[6]. Please?
[7]. MR. OKUN: Yeah. You've got it.
[8]. You gave it to me.
[9]. MR. HANNA: Okay.
[10]. (DOCUMENT HANDED TO WITNESS FOR REVIEW)
[11]. BY MR. OKUN:
[12]. **Q**. These are some notes of a meeting held on
[13]. December 8th, and am I correct, here in the bottom
[14]. Paragraph, that you were at [reading] I asked her
[15]. If she had been told that it was her responsibility
[16]. To cover the shift or find a qualified.
[17]. Replacement. She said no. Then I asked George if
[18]. He had ever explained this to Mari-An and he said
[19]. Yes, he did. He asked Mari-An if she remembered
[20]. When he suspended her for two days for a similar
[21]. Incident and told her that it was her
[22]. Responsibility to make sure her shift was covered.
[23]. Is that correct?
[24]. **A**. That is correct.
[25]. **Q**. So she had been suspended before for this?

224

[1]. **A**. By this she had, I just don't remember it.
[2]. **Q**. And am I correct that in her case you met
[3]. With her on at least two occassions, just you and
[4]. Her, to find out what her understanding was; is
[5]. That correct?
[6]. **A**. I don't recall –
[7]. **Q**. I mean these two –
[8]. **A**. – occasions.
[9]. **Q**. These two exhibits, memorandum, for the
[10]. Record, are two – well, this is a meeting you had
[11]. With her, correct? Just you and her?
[12]. **A**. That's? –

APPENDIX P

JEFFERSON SMURFIT CORPORATION
DISCIPLINARY ACTION AND WARNING RECORD

Date 11/24/97 Time 3:00 AM PM

NAME	CLOCK NO.	DEPARTMENT
MARI-ANN ANDERSON		FINISHING

Absence	Disobedience
X	X

(CHECK ONE AND EXPLAIN IN DETAIL)

REASON FOR ACTION: On 11/22/97 at approx. 7:00 p.m. I was called at home by Your co-worker and informed that you might be leaving at 11:00. I then talked to you, You were scheduled to work 12 HRS. From 7:00 p.m. to 7:00 a.m. You had informed me that you we Were not going to work past 11:00 p.m., You were instructed by me NOT to leave the plant And that you were needed to work all night till 7:00a.m. I had also informed you that if you elected to leave the plant then you would be walking off the job and would be subjecting Yourself to discharge According to our records, you left the plant at 11:04 p.m

ACTION TAKEN : Employee is here by suspended pending further I investigation.

Major offense X

BY: "s/ George Holtz" SUPERVISOR **UNION:** "s/ John Means"

EMPLOYEE: Employee Refused to sign

APPENDIX Q

TO THE FILES OF TONY STANLEY

Subject: Failure to remain on the job until property relieved.

On Sunday April 20, 1997. Tony failed to follow procedure by not remaining on the job until properly relieved. In lieu of discharge Tony was giving a two day suspension April 21 & 22, 1997, Without pay.

The decision to suspend Tony was made after a meeting that Tony had with Randy Hearn, John Means, and me. During that meeting, Tony brought up the following:

He was upset because of the unfavorable performance review he had.
It was not his intent to leave without proper relief—he thought he saw Sandra there.

Tony records reveal that this is the fourth time he failed to follow procedures—once while working on the sheeter, a second time for a safety violation, and the third for housekeeping. He was given time off without pay for the safety and housekeeping violations.

In lieu of discharge. Tony was given a two day suspension, however, if he violates procedure again the next step will be discharge.

Signatures: " s/ Tony Stanley "
Tony Stanley

" s/ Leonard L. Lukasik "
Supervisor: Leonard L. Lukasik

" s/ John Means "
Union Steward: John Means

Date: April 23, 1997

Per Tony & John. The safety violation did not have a suspension after appeal through the grievance process.

" s/ Leonard L. Lukasik "
4/23/97

APPENDIX R

JEFFERSON SMURFIT CORPORATION
DISCIPLINARY ACTION AND WARNING RECORD

Date *2-18-96* Time *9:36* AM PM

NAME	CLOCK NO.	DEPARTMENT
Diann Cobb		*FINISHING*

Attitude	Disobedience	MISC.
X	X	X

(CHECK ONE AND EXPLAIN IN DETAIL)

REASON FOR ACTION: *Employee Walked Off Job And Went Home.*

ACTION TAKEN : *Employee is here by suspended pending further investigation.*

Major Offense **X**

BY: "s/ *George Holtz*" Supervisor **UNION:**

EMPLOYEE:

PERSONNEL REPORT
Diann Cobb,
February 26, 1996

You have been on disciplinary leave without pay since February 19 while I investigated the incident that occurred on Sunday, February 18, 1996.

After interviewing you and several witnesses, I fine no evidence of abusive, profane, intimidating or discriminatory language on Mike Johnson's part. You and two witnesses confirm that your department manager, George Holtz, specifically directed you to remain on the job when you stated you were going home during this incident.

In spite of that directive, you did leave the premises without permission. This is a violation of our House Rules and is the basis for your termination effective today, February 26, 1996.

_____
Employee / Date
(Receipt Only)

" s/ John Means "
Steward / Date
(Receipt Only)

" s/ James Millar "
Supervisor / Date

Employee Comments:

Steward Comments:

APPENDIX S

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF: APPEAL DECISION NO. VIII-A-08375

CLAIMANT
Lewis H. Banks
3204 Anvil place
Greensboro, NC 27407-6739
S.S. No. 240-98-2333

EMPLOYER
Jefferson Smurfit Corporation
C/O James E. Frick
Post Office Box 283
Saint Louis, MO. 63166-0283

Jefferson Smurfit Corporation
ATTN: Manager
1006 Norwalk Street
Greensboro, NC 27407

* * * * * *

FINDING OF FACT:

1. Claimant last worked for Jefferson Smurfit Corporation on January 16, 1998 as a sheeter operator. From January 25, 1998 until February 14, 1998. Claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant filed a New Initial Claim effective January 25, 1998. The claimant's weekly benefit amount is_____, The claimant's maximum benefit amount is _____.

2. The Adjudicator, Judith A. Monroe, issued a conclusion under Docket No. 16789 holding claimant disqualified for benefits. Claimant appealed. Pursuant to G.S. 96-15(c), this matter came on before Appeals Referee Sharon A. Johnston for hearing on March 16, 1998. Pressent for the hearing: the claimant and his witness, Douglas Martin (President of Local 465). The employer, by written confirmation, chose not to participate in the hearing. (Comm. Exh. 24).

3. The claimant worked for the above-named employer from December 13, 1996 until January 16, 1998.

4. The claimant was discharged from this job because he alleged left work during continuous operations without being properly relieved.

5. On or about January 16, 1998, at approximately 11:00 p.m., claimant followed his normal course of conduct in preparing to leave. He shut down his machine, did the necessary calculations and paperwork and took the paperwork to the printing office.

6. The claimant did not need to wait for the employee on the next shift to get to the machine before leaving. If an employee would not be at work, the employer would notify the claimant that he would have to work overtime until the relief worker was available.

7. The claimant was not notified that the employee on the next shift , Teddy Johnson, would not be at work.

8. The claimant spoke with his supervisor and the supervisor on the next shift prior to leaving. No one told him that Mr. Johnson would not be at work. The claimant's supervisor told him to have a great weekend as the claimant was punching out.

9. The employer was not operating under continuous operation at the time of the claimant's alleged violation in that the plant was operating only three, eight hours shifts with weekends off. The collective bargaining agreement between the employer and the union defines continuous operations as seven days per week and twenty-four hours per day. (Comm. Exh. 9 Section2).

The employer has the responsibility to show that claimant was discharged for substantial fault or misconduct within the meaning of the law.

It is concluded from the competent evidence in the record that the evidence fails to show the claimant was discharged from the job for substantial fault or misconduct with the work.

DECISION:

Claimant is not disqualified for unemployment benefits.

/S/ Sharon A. Johnson, **Appeals Referee**

TIME CALL IN LOG SHEET

1 of 1 pge

BOX #353 **Jefferson Smurfit Corp**

Name: *Teddy Johnson* **Date:** *1-16-98*

Dept: *Printing* **Shift:** *3rd*

Reason for absence; *bad leg*

Return Date: *doctor's* appt. on Monday will be back when doctors say okay

Confirmation number given: *466* **Time**: *6:51 p.m*

APPENDIX T

Arbitration Proceedings Transcript

MARK GRUBBS

BEING CROSS EXAMINATION
BY THE
UNION ATTORNEY
MICHAEL OKUN

Taken Wednesday, January 6, 1999

****

Beginning on page 74-88,
Discussion on how Mr. Grubbs memory came back to him concerning the time he checked the call in number to see when my replacement had called in.

Also on page 88[7]
Model Employee.

****

DIRECT EXAMINATION
BY THE COMPANY'S ATTORNEY
THOMAS M. HANNA

Beginning on page 66[14]-69,
Mr. Gubbs alleging that I stopped production, to make it seem like the Grievant caused the company a sat back, not the case.

Also on page 70[15]
The Plaintiff job performances as a Sheeter Operator.

PAGE

86

[6]. **Q**. All right. So when did you learn that Teddy
[7]. Johnson-or do you know to this date that Teddy
[8]. Johnson had call in that night and left a message
[9]. "I'm not going to be here tonight"?
[10]. **A**. 11:35.
[11]. **Q**. How'd you find out?
[12]. **A**. I called the service.
[13]. **Q**. Oh you did. Now you remember, You did call
[14]. The service?
[15]. **A**. I'm not saying I remember, I may have. I may
[16]. Have checked the card. I determined for sure that
[17]. I know that Teddy was not there, so I had to have
[18]. Called the service.
[19]. **Q**. Oh, so now you're saying you called the
[20]. Service at 11:35? Is that your testimony now?
[21]. **A**. Yes sir.

70

[11]. Q. Had you noticed any attitude change on the
[12]. Part of Mr Banks during the period before the 16th
[13]. Of January?
[14]. A Yes sir.
[15]. Q. What was the change in that attitude?
[16]. A. Excellent employee, frendly, do anything you
[17]. Wanted, and he'd come all the way through the
[18]. Finishing department, got into the sheeting
[19]. Department, did a great job for us. We moved him
[20]. To do some training in the printing department at
[21]. Utility and he had been over there for two, three
[22]. Week-couple of weeks, several, weeks. I don't
[23]. Know exactly the time, then we had one of our
[24]. Sheeter operators retire, just kind of out of the
[25]. Blue just retired, we weren't expecting it, so we

71

[1]. Had to have a sheeter operator right then, so we
[2]. Moved Lewis back on the sheeter because he just
[3]. had come off and started training in the printing
[4]. And from that point on it was-he was just totally a
[5]. Different person.

78

[18]. **Q**. How. On the 15th you've got your note here,
[19]. It says, "At that night I told him that on that
[20]. Night the schedule would allow that but not to plan
[21]. It on every time. When his replacement did not
[22]. That I would make every effort to do all I could to
[23]. Find a way to get him out to there on time if I
[24]. Could, "Is that what you told him?

79

[1]. **A**. Yes.
[2]. **Q**. Where does this four hours come from, that
[3]. You're responsible for up to four hours? Where
[4]. Does that come from?
[5]. **A**. That's in our rule book, I don't know exact
[6]. Page, but it says if your replacement does not show
[7]. up you can be made to stay over up to four hours.
[8]. Q. Which rule book is that, Employee Handbook or
[9]. The contract or what?
[10]. **A**. I'm not sure.
[11]. **Q**. Well. Can you look in a handbook and see if
[12]. You can find it, or the Collective Bargaining
[13]. Agreement and see if you can find it where if says
[14]. That?
[21]. **BY MR. OKUN**;
[22]. **Q**. If you find it later you tell me.
[25]. **THE ARBITRATOR**: Give me a call at home.

APPENDIX U

Arbitration Proceedings Transcript

JOHN MEANS

DIRECT EXAMINATION
BY THE
UNION ATTORNEY
MICHAEL OKUN

Taken Wednesday, January 6, 1999

****

Beginning on page 364-380,
Discussion on how Mr. Grubbs made a statement that did not happen about the third shift running on the night of questioning.

****

RE-DIRECT EXAMINATION
BY
MICHAEL OKUN

Beginning on page 380(14)-380(25),
That Mr. Means brought up in the meeting that was held on Jan. 22, 1998, about third press was not operating Jan. 16, 1998, at the end of my second shift

PAGE
378
[20]. **BY MR. HANNA**:
[21]. **Q**. How long does a preventive maintenance check
[22]. Take, Mr. Means?
[23]. **A**. It depends on what they want done. Sometimes
[24]. It takes eight hours, sometimes four hours.
[25]. How long did it take on the night of the

379

[1]. 16th?
[2]. **A.** Well, they were scheduled for eight hours
[3]. That night.
[4]. **Q.** So they were down the whole eight hours?
[5]. Yes sir.
[6]. **Q.** You know. It's strange, but I see no
[7]. Reference in the grievance or any of the Union's
[8]. Documents stating it wouldn't make any difference
[9]. On the 16th, the presses weren't operating anyway
[10]. I see no defense like that raised. Do you remember
[11]. Any being raised at any time?
[12]. **A.** In the-January the 22nd meeting I
[13]. Mentioned it to Randy. He said, "Well, that's not
[14]. The principle: you're not supposed to leave when
[15]. You're not properly relieved,"

380

[15]. **REDIRECT EXAMINATION**
[16]. **BY MR. OKUN;**
[17]. **Q.** Real quick here. So you did make the point
[18]. About the production at one of these meetings, that
[19]. There was nothing going on, as far as you know?
[20]. **A.** Yes.
[21]. **Q.** But the Company until today never claimed it
[22]. Was a problem; is that right?
[23]. Not to my knowledge.

APPENDIX V

Jefferson Smurfit Corporation

Interoffice Correspondence

Date: April 17, 1998

TO: Doug Martin-Pres. Local 465-s GCU **OFFICE:**

FROM: Jim Seel **OFFICE:**

Subject: Lewis Banks-4th step Grievance answer

After a review of this Grievance I find there is no evidence of racial discrimination as charged. The interview with Gladys Coley, the witness Lewis named to support his claim of being "set up" by the company, only uncovered the fact that Gladys had overheard a part of a conversation between Mark Grubbs and Wess Wood on the evening of 1/15/98. Gladys reported she had heard only 5 words as she walked by the individuals talking and those words were "Lewis walked off the job" spoken in conversation tones. Gladys did not hear anything else and when questioned abut whether she felt the discussion could have indicated some type of conspiracy to set up Lewis, she indicated she did not think so. She also stated that her message to Lewis delivered the next day to "Watch yourself" was meant to tell him not to walk off the job or get him into trouble or he could be fired.

The involvement of Gladys Coley strengthens the company's opinion that Lewis Banks was well aware of the possible ramifications of his actions but chose to shut his machine down and leave his workplace on Friday 1/16/98 anyway without any communication or concern that his relief had not reported to work.

This Grievance is therefore denied.

"s/ *Jim Seel* "

APPENDIX W

IN THE MATTER OF: ARBITRATION OPINION AND AWARD
Jefferson Smurfit Corp. FMCS No. 98-12877
and Grievant: Lewis Banks-Discharge
GCIU LOCAL 465-S

Before: Robert W. Foster, Arbitrator

APPERANCE

For the Union: Micheal Okun, Attorney
For the Company: Thomas M. Hanna, Attorney

DISCUSSION AND OPINION

Some offenses are so extremely serious such as stealing and striking a supervisor, that summary discharge for the first occurrence is called for. Leaving the job without permission does not necessarily fall within that category in the absence of extreme aggravating circumstances or progression discipline has failed to serve its corrective function. The Company House Rules does not mandate discharge for this offense and recognizes that leaving the job without permission "will result in disciplinary action discharge". * The Company's decision to withhold the discharge penalty and impose minor discipline in the only other two past applications of this rule likewise indicates that circumstances may reduce the level of culpability for this infraction.

First, as an indication that the grievant's violation was not as premeditated and willful as charged by the Company, is the fact that the grievant had worked overtime on a number of occasions in the past when asked by his supervisor, and had gone home on other occasions without seeing his replacement.

The ultimate penalty of discharge is so unreasonably harsh in view of the mitigating and extenuating circumstances, including the minor discipline administered to other employees who violated

the rule, that the arbitrator must reverse this abuse of managerial discretion. In reinstating the grievant to his former employment.

AWARD

After careful consideration of the evidence and arguments of the parties, and bases on the reasons set out above, the award is that the discharge of the grievant was not for just cause.

Accordingly, the Company is directed to reinstate the grievant to his former position as soon as practicable after receipt of this award with no lost of seniority and with no back pay for the time lost during the period of his unemployment.

" s/ Robert W. Foster "
Robert W. Foster
Arbitrator

April 15, 1999
Columbia, South Carolina

APPENDIX X

JEFFERSON SMURFIT CORPORATION
DISCIPLINARY ACTION AND WARNING RECORD

Date *8/4/99* Time ____ AM / PM

NAME *Lewis Banks*	CLOCK NO.	DEPARTMENT *PRINTING*
Conduct X	Disobedience X	

(CHECK ONE AND EXPLAIN IN DETAIL)

REASON FOR ACTION Employee showed Insubordination to the Plant Manager by blatantly disregarding *The Plant Manager's instructions not to use* this Grievance *Meeting forum for prayer or to advance his* personal *Religious beliefs upon others. In addition, Mr. Banks' Uncontrollable outburst after being once again instructed* Was unruly and insulting to those who were convened in the meeting With the intention of hearing the grievance Mr. Banks has no right to Impose his personal religious beliefs on others. This company does not condone or promote any religious beliefs in forums of any kind. This Behavior will not be tolerated in future.

ACTION TAKEN : This is a written disciplinary warning in lieu of More severe disciplinary action if this behavior continues in the future.

First Warning X

Major offense X

BY: "s/ *George Holtz*" Supervisor	UNION:
EMPLOYEE:	

APPENDIX Y

Graphic Communications Union Local No. 465-S
Greensboro, North Carolina
GRIEVANCE FORM

NAME Rev. Lewis Banks DATE 7-30-99

ADDRESS 3204 Anvil Pl.

CITY Greensboro STATE NC ZIP CODE 27407

NAME OF COMPANY Smurfit & Stone

CLASSIFICATION Sheeter Oper. SHIFT 2-3 Clock No.

Describe clearly and in detail your grievance and relief sought. This form is to be made in triplicate (3), When complete give first and second copy to your shop steward and keep this copy. Shop steward will give first copy to Company and keep second copy for Union file.

Grievance: Infringed on my Constitutional Rights, of the first (1st) Amendment; of freedom of speech

See attached sheet.

Relief Sought:

"s/ Elder Lewis Banks "
Employee Signature

Steward's Comment:

Steward Signature

Company's Answer:

Supervisor's Signature

July 30, 1999

To Whom It May Concern:

On the 28th of July, about 3:15 p.m. I had a meeting with the Company Smurfit-Stone Co. Plant Manager George Holtz, Human Resources Conja Wade and with the Union Committee. The meeting was for the Grievance that I, Elder Lewis Banks had filed against the company conducting an Unfair Investigation, on June 29, 1999.

Now, every meeting that the company and the union had, I always opened by giving Honor to my Lord and Savior Jesus Christ, but at the meeting that was schedule for July 28, 1999 Mr. Holtz came in the office, as sat at his desk and said, "That there will be no p[raying at this meeting".

After he made that statement he then turned it over to the committee and then the committee turned it over to me Elder Lewis Banks. Like I stated before, I always opening with "I like to giving Honor to my Lord and Savior Jesus Christ" not once have anybody said anything about this until now.

After I preceded with my opening statement of first giving Honor to GOD, Mr. Holtz then canceled the meeting and said ""Didn" I just tell you that it will be no praying in this meeting". And I told him that I was not praying I was giving Honor to my Lord and Savior Jesus Christ.

See, Christ Jesus is the one and only one who died on the cross for my sins who gave his life for me that I may have a chance to have everlasting life with our Father which art in heaven, Hallowed be thy name for the shedden of his blood and accepting him as my Lord and Savior and believing and knowing that he rose from the dead as he said he would in the gospel of St. John chapter 2:19 Destroy this temple, and in three days I will raise it up.

I love Jesus Christ AND HE IS MY LIFE. How can a person say to another person not to pray. Look at this

if you will Jefferson Smurfit has dinners once a year or so and right before partaking in eating, someone in management will ask a person to PRAY! Even the money that we work for have on it IN GOD WE TRUST! Mr Holtz has the audacity to open his mouth to tell me that I can not pray if I wanted to., but I told him that I was giving Honor to GOD. See I can pray even when I am talking with another person, typing, walking, and even when I am chewing bubble gum. I do not need anyone to pray with me for my Lord and Savior Christ Jesus to here me, but what I was doing, was and is giving Honor where it is do.

I understand that people might not understand the Law of GOD almighty, so lets see if they understand the Law of the land. The Constitution of the United States, under the First (1st) Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

At the next meeting that I have with the company Smurfit & Stone about this Grievance or any other grievance, I will continue to open with my opening statement of giving Jesus Christ my Lord and Savior the Honor that is do to him. If anyone try to stop me, of giving honor by your law I will take you and the company Smurfit & Stone to court for Infringing on my Constitutional Rights, of freedom of speech.

Verily, Verily, I say unto you:

" s/ *Lewis H. Banks* "
Lewis H. Banks
Elder

APPENDIX Z

EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION

It is the policy of the Company to provide equal opportunity for all qualified persons and not to discriminate against any employee or applicant for employment because of race, religious, color, sex, age, national origin, handicap or because he or she is a disable veteran or Vietnam era veteran.

In all activities or recruitment, employment, promotion, transfers and other terms and conditions of employment, the individual's ability to perform specific job functions shall be the primary consideration.

The Company is committed to these policies of equality of employment opportunity and takes affirmative action in its implementation. The Company experts all employees, especially all managers and supervisors, to adhere actively to the principle set forth in this policy.

Any concern which an employee may have related to his issue should be brought immediately, through channels or directly (as the situation dictates), to the attention of the Department Head, the General Manager or Employee Relations Coordinator.

Any employee who violates this policy will be subject to disciplinary action and /or termination of employment.

HOUSE RULES

Groups of people who are working together for any purpose require certain guidelines for their conduct and relationships. It is important that all of us, houly and salaried, be aware of our responsibilities to the company and to fellow employees.

We intent to take a constructive approach in this area and at the same time insure that actions that interfere with our operations or an employee's job are stopped

Although it is impossible to identify every possible violation of standards of conduct, the following is a list of infractions which will result in disciplinary action and / or discharge.

1. The possession, use, distribution, sale or offering for sale of any intoxicants, narcotics, illegal drugs, marijuana or hallucinogenic agent while on company property. Reporting for or being at work under the influence of any intoxicants, narcotics, illegal drugs hallucinogenic agent.
2. Carrying using, or storing firearms or any other weapons in the company building.
3. Misconduct, malicious mischief or horseplay which could result in injury or fear of injury or destruction of property of other employees or the company.
4. The actual or attempted theft, fraud, abuse, or unauthorized use of company property or money, including aiding or abetting such acts or stealing personal property of another employee.
5. Punching another employee's time card, intentionally reporting incorrect time, or falsifying company documents and records.
6. Gambling
7. Sleeping on the job.
8. Threatening, intimidating, coercing, or abusive language or actions to others.

9. Failure to follow safe procedures, safety rules or security rules or such carelessness regarding safety that it cause as accident to yourself or a fellow employee.
10. Insubordination or refusal to do work as directed.
11. Falsifying information when accident or other incidents in the plant are being investigated.
12. 12 Failure to be ready to start at the time your work schedule begins or stopping work before work period ends. This rule applies to overall work period, including meal period and other breaks.
13. Leaving the job without permission.
14. Failure to keep the company (Human Resources Manager) informed of your current address and telephone number where you may be readily contacted.

Section 8. *Preferential Seniority.* Notwithstanding their position on the seniority list, the President, Vice President, and Chief Steward shall, in case of reduction in the work force, be continued at wotk in their plant provided they have the present necessary fitness and ability to satisfactorily do the work available in their plant.

Section 9. Seniority List.

(a) When an employee acquires seniority, his name shal be placed on the seniority list in order of the hiring date.

(b) The Company and the Union have previously cooperated in drawing up local plant seniority lists which have been posted in suitable locations within each of the several plans. An up-to-date seniority list will be posted from time to time, and any employees appearing on such revised seniority lists who did not appear on the previous lists, must file any objections they may have said revised lists within two (2) weeks after they are posted. Otherwise they will be considered as true lists.

Section 10. *Job Bidding Procedure,*

(a) If at any time there is a permanent vacancy to be filled in the bottom job classification of a line of progression or in a job classification not in a line of a progression, such job shall be posted for bid for a period of forty-eight (48) hours. Monday through Friday.

(b) During such time any employee who desires to be considered for such posted job classification, shall bid therefore by signing the required forms.

(c) Until a permanent assignment is made, such job may be filled by the Company on a temporary basis.

(d) Employees bidding for the posted job will be reviewed and such job will be filled on the basis of seniority consistent with Section 3, of this Article.

(e) In the event that it is determined that none of the bidders have the necessary fitness and ability to satisfactorily do the required work, the Company is free to otherwise fill such job opening.

(f) Employee may bid on a job paying a higher rate than the rate of his or her assigned classification without restriction, however, no employee will be permitted to bid on a job classification carrying the same rate as his or her job classification until

APPENDIX AA

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Greensboro Division

ELDER LEWIS BANKS,
Plaintiff,

No. 1:00-CV-00814
Defendant's Response
To Plaintiff Interrogatories
To Jefferson Smurfit

v.

JEFFERSON SMURFIT CORP.
Defendant,

COME NOW the Defendant, Jefferson Smurfit, through counsel, and responds, to Plaintiff's Interrogatories as follows:

4. And will the company please tell the court who were [sic] next in line for the job that you stated that none of the incumbents were deem [Sic], who were these employees, name, race, and how long were they employed with the company?

Response: It was determined that none of these employees had the necessary experience and ability to satisfactorily do the required work. Thus, the Company otherwise filled the job opening for 2nd Press Operator by seeking experience applicants and not posting a bid sheet. Kevin Wells was chosen due to his previous experience and working in the capacity of 2nd Press Operator.

5. Has any other employee received written warning for absenteeism, without receiving a verbal written warning first? If yes give name[s] dates, and race.

Response: The Company attendance policy provides for verbal warnings prior to written warnings. It is possible that, due to clerical errors, verbal warnings occasionally have not been reduced to written for placement in personnel files. This oversight may have occurred in the past but not the norm.

6. Was Mr. Wells ever terminated for fighting another employee, from the other plant that Smurfit-Stone has in Greensboro? Who were[Sic] that person, name, race, and the length of time that the company employed him? And is he still employed with Jefferson Smurfit like Mr. Wells, if not why?

Response: This interrogatory request confidential personnel information from another facility within a difference division of the Company. The Greensboro Folding Carton facility does not have control over any personnel file maintained on Kevin Wells or any other employee at another facility in a different division of the Company. Kevin Wells, who once worked for another division of the Company, was hired off the street as a probationary employee at the Folding Carton facility on East Market Street in Greensboro. He served his 60-day probationary period without accumulating seniority. His date is reflected as February 16, 1998.

8. Doing[Sic] the Grievance procedures of the 4th step meeting that was held on March 4, 1998, I asked the company did anybody check the time log sheet to see what time my replacement had called-in, the Union committee was there also in that correct[Sic]? And did (JS) submit the log sheet at that meeting? If no explain?

Response: Mr. Banks was advised that the call-in time log sheet had been reviewed. The Union did not request submission of any of any call-in records at the grievance step meeting.

14. The company, in December 1996[Sic] had a Christmas dinner in the warehouse of the plant on E. Market St.[Sic] is that correct? And management asked Ms. Doris Slade,[Sic] to bless or pray over the dinner is that correct?

Response: On at least one occasion, Doris Slade, a black employee, said a blessing at an employee-organized Christmas dinner.

25. In order to place a verbal written warning in a [Sic] employee files [Sic] it has to be in writing is that correct? So do you have a verbal written warning in my files dated Jan. 15, or 16, 1998? And if not why? Did JS tell the Fricks Company that they did receive a verbal written warning? Explain.

Response: Same explanation as to clerical error as set forth in Response No. 5 above. The Frick Company was advised that, "It was explained to Mr. Banks by his supervisor on 1/15/98 that he could not leave his job until being properly relieved, i.e., his replacement had arrived or management excused him from having to work. On 1/16/98, Mr. Banks left before being relieved. He did not receive permission from his supervisors to leave nor did his replacement come in to relieve him. Per the Labor Agreement, it is the employee's responsibility to make sure he has been properly relieved before leaving the job".

4. And will the company please tell the court who were [sic] next in line for the job that you stated that none of the incumbents were deem [Sic], who were these employees, name, race, and how long were they employed with the company?

This__9th__ day of March, 2001.

"s/ Fred T. Hamlet"
Fred T. Hamlet
Attorney for Defendant

APPENDIX AA-2

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Greensboro Division

ELDER LEWIS BANKS,
Plaintiff,

No. 1:00-CV-00814

Defendant's Supplemental Response To Plaintiff's Interrogatories To Jefferson Smurfit

V.

JEFFERSON SMURFIT CORP.
Defendant,

COME NOW the Defendant, Jefferson Smurfit, through counsel, and responds, to Plaintiff's Interrogatories as follows:

4. And will the company please tell the court who were [sic] next in line for the job that you stated that none of the incumbents were deem [Sic], who were these employees, name, race, and how long were they employed with the company?

Response: (1) Sandra Cunningham-black female-6 months as Feeder Operator
[2] Phalin Jones-black female-5 months as Feeder Operator
[3] Eric House-Morehead-black male-5 months as Feeder Operator
[4] Doug Harris-black male-4 ½ months as Feeder Operator
[5] George Moyer-black male-4 ½ months as Feeder Operator

It was determined that none of these employees had the necessary experience and ability to satisfactorily do the required work. Thus, the Company otherwise filled the job opening for 2nd Press Operator by seeking experience applicants and not posting a bid sheet. Kevin Wells was chosen due to his previous experience and ability in training on the printing press.

This 19th day of June, 2001.

"s/ Fred T. Hamlet"
Fred T. Hamlet
Attorney for Defendant

APPENDIX AA-3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Greensboro Division

ELDER LEWIS BANKS,
Plaintiff,

No. 1:00-CV-00814

Defendant's Second
Supplemental Response
To Plaintiff's Interrogatories
To Jefferson Smurfit

v.

JEFFERSON SMURFIT CORP.
Defendant,

COME NOW the Defendant, Jefferson Smurfit, through counsel, and responds, to Plaintiff's Interrogatories as follows:

6. Was Mr. Wells ever terminated for fighting another employee, from the other plant that Smurfit-Stone has in Greensboro? Who were [Sic] that person, name, race, and the length of time that the company employed him? And is he still employed with Jefferson Smurfit like Mr. Wells, if not why?

Response: Kevin Wells, a white employee, and Jimmy Emerson, a black employee were terminated after a scuffle at the JS label plant on Norwalk Street in Greensboro, Kevin Wells was not the aggressor in the scuffle. Jimmy Emerson is no longer employed by JS.

This 2nd day of July, 2001.

"s/ Fred T. Hamlet"
Fred T. Hamlet
Attorney for Defendant

APPENDIX BB

Smurfit-Stone Container Corporation

Interoffice Correspondence

Date: July 20, 1999

TO: Union Grievance Committee

FROM: George Holtz **Office**

SUBJECT: Settlement of Grievance Dated 6/18/99
COPIES: Conja Ware

Per our conversation on this 20th day of July 1999, in order to settle the grievance dated 6/18/99 from George Moyer and Pharlina Jones, the company agrees to promote both parties to the position of 1st Press Operator in Progression Step 1. This action will be effective today with seniority ranking by alphabetical order. Both parties as well as the grievance committee understand that the responsibilities and expectations of their performance are equal to those of the same capacity.

"/s Doug Martin "
Doug Martin, Union President

" / s George S. Holtz "
George Holtz, Plant Manager

APPENDIX CC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
1:00-CV-00814

ELDER LEWIS BANKS,
Plaintiff,

v.

PLAINTIFF'S MOTION
FOR RECONSIDERATION
OF CASE #1:00CV00144

JEFFERSON SMURFIT CORP.
Defendant,

PURSUANT, to Fed. R. Civ. P. Rule 60. Relief from Judgment and Order, **(a) Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

The case number 1:00CV00814 is pending in the Appellate Court. So the Plaintiff asked the Appellate Court did case #1:00CV00144 follow the case that is on appeal, and it did not only on request from a party of the case. So the Appellant files a Motion to order the record of case #1:00CV00814 with the Appellate Court dated March 20, 2002.

On March 21, 2002, the Plaintiff went to the Middle District Court house here in Greensboro, NC. to review the case #1:00CV00144, to see what evidences that was submitted under that case #1:00CV00144. And on March the 9, 2000, a document was filed by the

Plaintiff and low and behold the Plaintiff did in fact submitted in his complaint a RIGHT TO SUE LETTER, that the court state or ruled that the Plaintiff didn't do. THEREFORE, under this rule 60 (a), at any time, During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

The Plaintiff would like for the Middle District to correct this mistake and return the Plaintiff back his refilling fee of $150.00.

THEREFORE, the Appellant requests that the Appellate Court order that the records of case # 1:00CV00144 are sent for review.

This day 21st of March 2002.

"s/ Lewis Banks"

Elder Lewis Banks
3204 Anvil Place
Greensboro, NC 27407
336-852-1684

APPENDIX DD

McMahon, Hanna, Linihan, Cody & McCarthy
Attorney At Law a Professional Corporation
2730 North Ballas Road- Suit 200
Post Office Box 31901
ST. LOUIS, MISSOURI 63131-3039

Telephone 314-567-7350
Facsimile 314-567-5968

July 8, 1998

Edward A. Smith
Attorney
National Labor Relations Board
Region 11
Republic Square-Suit 200
4035 University Parkway
Winston-Salem, NC 27106-3325

Re: Jefferson Smurfit Corporation
Case No. 11-CA-17942
Our File No. JFS-420

Finally I would point out that Jefferson Smurfit Corporation has over 160 union contracts in its various locations, Grievance and arbitration are an everyday fact of life. **The contract is clear on the employer's right to hire from outside sources if none of the incumbent employees seeking a job are deemed qualified**. In the event of a dispute this may be made the subject of a grievance and, if necessary, an arbitration. The Charging Party's activities in this regard are nothing

less then insignificant and have no bearing whatsoever on the decision to terminate his employment.

Enclosed please find the following documents:

1. Lewis Banks' grievance
2. Current collective bargaining agreement
3. Employee handbook

Very turly yours,

"s/ Thomas M. Hanna "
Thomas M. Hanna

APPENDIX EE

EMPLOYMENT SECURITY COMMISSION
OF NORTH CAROLINA

IN THE MATTER OF: APPEAL DECISION NO. VIII-A-05934

CLAIMANT
Harry Emerson
2501 Bywood Road
Greensboro, NC 27405-5487
S.S. No. 243-31-0195

EMPLOYER
Jefferson Smurfit Corporation
C/O James E. Frick
Post Office Box 283
Saint Louis, MO. 63166-0283

Jefferson Smurfit Corporation
ATTN: Manager
1006 Norwalk Street
Greensboro, NC 27407

* * * * * *

FINDING OF FACT:

1. Claimant last worked for Jefferson Smurfit Corporation on November 25, 1997 as a press helper. From December 28, 1997 until January 17, 1998, claimant has registered for work and continued to report to an employment office of the Commission and has made a claim for benefits in accordance with G.S. 96-15(a). The claimant has a New Initial Claim effective March 23, 1997. An Additional Initial Claim was filed effective December 28, 1997. The claimant's weekly benefit amount is $256. The claimant's maximum benefit is $6656.

2. The Adjudicator, J. Chris Underhill, issued conclusion under Docket No. 6111 holding claimant disqualified. Claimant appealed. Pursuant to G>S> 96-15(c), this matter came on before Appeals Referee Steven A. Armstrong for hearing on February 23, 1998. Present for the hearing: claimant, his witness Todd Williams, his attorney Janet Blue, and law student Jennifer Bell; for

employer Kurt Zimmerman (director of operations) and Dennis Weston (plant manager).

3. The claimant was discharged from this job because he was involved in a physical and verbal altercation with a co-worker.

4. The claimant was hired in September 1995.

5. Upon being hired, claimant signed off on employer's policy which prohibited "fighting." And use of "threatening, intimidating, coercing, or abusive language or actions to others." Violation of these policies could result in immediate discharge. In September 1997 and on November 20, 1997 this policy was reiterated to all employees.

6. On November 24, 1997 claimant observed the letters "KKK," written in the woman's bathroom. He complained to his supervisor Mr. Weston.

7. Upon arriving to work on November 25, 1997 claimant reiterated his complaint to Mr. Weston.

8. Claimant worked at press #1. As claimant's day progressed he ended up having extra blank paper available. As company procedure required he determined that press #3 was using the same paper. Claimant brought his extra paper over to press #3 and left it there.

9. Kevin Wells worked at press #3.

10. After claimant delivered the paper to press #3 he was confronted by Mr. Wells. Mr. Wells expressed dissatisfaction over having the paper left there in his absence. Words were exchanged between claimant and Mr. Wells. Mr. Wells, who is white, called claimant, who is black, a "nigger." Eventually Mr. Wells pushed, punched, squirted water into claimant's eyes which caused a burning sensation, and eventually fought with claimant. Claimant justifiably grabbed and threw punches at Mr. Wells. Almost immediately claimant and Mr. Wells were separated.

11. After the fight, and as claimant and Mr. Wells were still apart, claimant threatened Mr. Wells by telling him that he would "kick his ass."

12. Mitigating circumstances surrounding claimant's conduct are as follows; claimant was justified in

defending himself in the manner he did; however he was not justified in threatening Mr. Wells.

It is concluded from the competent evidence in the record that claimant threaten a co-worker after having just defended himself. As such, claimant was discharged for substantial fault on his part in connection with the work. Due to mitigating circumstances, claimant is disqualified for four weeks.

DECISION:

Claimant is disqualified for benefits beginning December 28, 1997 and ending January 24, 1998.

/S/ Steven A. Armstrong, Appeals Referee

APPENDIX FF

Charge Number: 145980197
(Banks, L vs Jefferson-Smurfit)

Statement from Ralph Meers
Union Secretary and Local Representative
Date June 6, 1999
1-800-248-8853

Questions in response to R's pls

Mr. Meers stated that he handled the fourth-step grievance resolution of CP's grievance.

Q. Did management offer CP reinstatement into his one-month suspension?

Mr. Stated that if management offered CP's job back, the Union would seriously considered the offer. Had an offer been made, Meers stated that the grievance would not have gotten to the fourth-step. Meers stated that no time does he recall such an offer and that he has no paperwork that an offer was made or that CP rejected the offer.

At the fourth-step, Meers stated that management did not offer CP his job and this was the reason the grievance went into arbitration.

Meers stated that Fred Smith, Union Representative, who handled the first step could have had general discussion with CP on settlement, but that nothing was put forth and there was no offer from management not any interest from management to settle in offering CP his job back. Meers stated that if an offer was made, a written statement of an offer and a rejection would have been submitted by Fred Smith, and that this did not occur.

Meers stated that none of his conversation with CP did CP indicate that management offer to him.

Meers stated that the Arbitrator ruled that CP be reinstated which he was in May 1999. The Arbitrator did not rule that CP be awarded back wages nor was there any mention or record that management initial offered CP his job back.

Q. Is there a variance in level of discipline due to seniority. That is the two whites (tenured) who committed same offense were issues a three-day suspension and the other a 3-week suspension while CP was discharged.

Mr. Meers stated that the Arbitrator ruled that CP was treated more harshly than the whites who committed the same offense. He stated that he recalls Diane Cobbs (Black) being discharged for the same offense as CP and the whites. Ms. Cobbs was awarded her job back through the Union but she took a cash settlement and not the job offer because she had other employment. Mr. Meers stated that Ms. Cobbs was a 20 year employee.

Mr. Meers stated that Ms. Cobbs filed a EEOC charge about being discrimination against regarding her discharge. Meers stated seniority is not considered in the level of discipline. There is a progression line of discipline: written warning, suspension, and discharge. There are some immediate dischargeable offenses, Walking off the job is one them.

Q. Were the same officials involved in the discipline issued to CP and the other two whites and Ms. Cobbs.

Mr. Meers Stated that the recommending and approving officials are the same who carried out the discipline on CP, the two white employees and Ms. Cobb.

" s/Ms. P. Logan "

APPENDIX GG

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Greensboro Division
Civil Action No. 1:00CV00814

ELDER LEWIS BANKS,	}	
Plaintiff,	}	
	}	
v.	}	**AFFIDAVIT OF JIM SEEL**
	}	
	}	
JEFFERSON SMURFIT CORP.	}	
Defendant,	}	

Jim Seel, being duly sworn, deposes, and says that:

1. My name is Jim Seel and I am General Manager of the Jefferson-Smurfit facility at 2600 East Market Street, Greensboro, North Carolina. The Company manufactures cartons out of boxboard at this facility which is a plant within the Folding Carton and Boxboard Mill Division of Smurfit-Stone (formerly Jefferson-Smurfit) Corporation;

2. As General Manager of the 2600 East Market Street facility, I am familiar with the allegations made by a former employee, Lewis Banks, in this lawsuit. Those allegations are false and unfounded;

3. Lewis Banks began his employment with the company in December of 1996 as a catcher in the Finishing Department. After about six (6) months, he was awarded a bid as, and promoted to, a sheeter in the Printing Department preparing stock for the printing machine. In January of 1998, Lewis Banks was a second-shift sheeter in the printing Department and was not the most senior employer assigned to the sheeter position. He was never trained as a second pressman or as

a head pressman. Further, the printing pressmen position were not the next job position in his progression line;

4. I am familiar with the circumstances surrounding the hiring of Kevin Wells as a second-shift printing press operator in February of 1998. In the Fall of 1997, we had expanded our pressroom and needed more experienced printing press operators then we then had at the plant. We interviewed outside applicants because only vacancies in entry-level position are required to be posted at the plant. Kevin Wells, who had previous training on printing press at another Company facility in Greensboro which manufactures labels for boxes, was sent to us by a temporary agency;

5. Kevin Wells first began working at our plant as an employee of that temporary agency, Express Personnel. He remained on the payroll of that temporary agency until he completed 400 hours. He was then hired by the Company on February 16, 1998, and placed on a 60-day probationary period as a second press operator. Kevin Wells did not retain any past seniority when he was hired at our facility but, instead, was treated as a new hire as of February 16, 1998 and placed on an initial probationary period. I understand that, because Kevin Wells had retained a Company uniform, Lewis Banks believes Kevin Wells somehow received preferential treatment when he was hired. That is simply not so;

6. Lewis Banks was trained as a second pressman or as a head pressman. The next job position after sheeter in the progression line was that of feeder operator (utility person), not second press operator. Lewis Banks was a sheeter and was not even the most senior sheeter in the Printing Department;

7. In January of 1998, there were six (6) press operators (or head pressman) in the Printing Department at our plant. Two of those head pressman, Sam Gwynn and Frank Thompson, were black males. In January of 1998, there were six (6) press operators (or second pressmen) in the Printing Department at our plant. Two of those pressmen, Charles Hall and Charles Hood, were black males. Thus, one-third (33%)
of all operators were black employees in January of 1998;

8. In January of 1998, Sam Gwynn, a press operator, was the second highest-paid hourly employee in the plant. Frank Thompson, also a press operator, was the third highest-paid hourly employee in the plant. Charles Hall, a press operator, was the eleventh highest-paid hourly employee at our plant. Charles Hood, a second press operator, was the twelfth highest= paid hourly employee in the plant. One-third (33%0 of the twelve (12) highest-paid hourly employees at our plant were black employees in January of 1998;

9. I am familiar with the discharge of Lewis Banks in late January of 1998. At a time when assigned machine was in continuous 24-hour operation, Lewis Banks walked off the job without being relieved. Mr. Banks had been told by his supervisor on the previous day that he could not leave until his replacement arrived. On the following day when Lewis deliberately left (after being told on the previous day that he could not leave until his replacement arrived), he was discharged for a premeditated and willful violation of the plant rules and of the Union Contract. Leaving a machine without being properly relieved and without supervisor's permission is a violation of the is a violation of the House Rules set out in the Employee Handbook and a violation of the

Collective Bargaining Agreement between the Company and GCIU Local 465-S;

10. Following his discharge, Lewis Banks filed an unfair labor practice charge with the NLRB claiming that he was discharged because he had filed a grievance alleging that the Company had violated the Union Contract by filling a job opening by hiring Kevin Wells from outside the Company. Thay unfair labor practice charge was dismissed by the NLRB based upon the subsequent arbitration decision rendered as a result of Banks' grievance under the Union Contract;

11. Lewis Banks also filed a grievance under the Union Contract over his discharge. In that grievance, Lewis Banks claimed that his discharge was discriminatory and sought reinstatement with back pay. Retroactive seniority, and no points added for time lost. The Company found no basis to support his claim that his discharge was the result of discrimination and denied his grievance. The grievance ultimately went to arbitration where, in April, 1999, the Arbitrator found that Lewis Banks was guilty of violating plant rules and the Union Contract by leaving his job without being properly relieved. The Arbitrator reinstated Lewis Banks but with no back pay, resulting in a fifteen (15)-month disciplinary suspension;

12. I am familiar with the circumstances surrounding the suspension of Tony Stanley and Mary Ann Anderson, both of whom had fourteen (14) years of service with the Company. Neither Tony Stanley nor Mary Ann Anderson were similarly situated to Mr. Lewis Banks and their circumstances were different. In sharp contrast to those other employees, Lewis Banks acted in deliberated defiance of the plant rule and the Union Contract, never conceded that he had done

anything wrong, expressed no remorse, and, in fact, never agreed to obey the rule in the future;

13. Tony Stanley received a two-day disciplinary layoff for leaving before his replacement arrived. Stanley convinced his supervisors that he thought that he had seen his replacement arrived, but was in error. Stanley stated that he would not have laft if he had known that his replacement had not arrived. Stanley assured his supervisors that he would not make the same mistake again;

14. Mary Ann Anderson was also disciplined for leaving work. Knowing that would be unable to complete her shift because of her religious convictions, Ms. Anderson elected to work as much of the shift as she could. Her regular supervisor was absent and she had previously told her lead person that she could not work early on Sunday morning. Upon review of her circumstances, the Company agreed to allow Ms. Anderson to return to work but only if she agreed to meet certain conditions. Ms. Anderson agreed to meet the conditions, expressing regret for her prior actions. As a result, Ms. Anderson's discharge was reduced to a three-week disciplinary layoff without pay and six months' probation;

15. I am also familiar with the circumstances surrounding the discharge (and subsequent resignation) of Diane Cibb, a Black female employee. Diane Cobb, who had a long history of work related problems, was told not to leave during her shift. She did so anyway and was terminated. Ultimately, and during grievance proceedings, she was allowed to resign. I am also familiar with the circumstances surrounding the suspension of Howard Whitsett, a black male employee of thirty-three (33) years service with the Company. Howard Whitsett left the job without being properly relieved when he lost his

temper one Sunday night because no one would fill in for him. Because of his excellent work record, some confusion concerning a previous discussion with the Plant Manager, and his expression of remorse, Mr. Whitsett was given a one-week suspension instead of discharge;

16. The Company does not promote any particular religious belief in ghe conduct of its business. Mr. Banks was given the opportunity to say private prayers, if he so chose, outside of the meeting rooms and prior to grievance meetings. In August of 1999, Mr. Banks received a written disciplinary warning for insubordination to the Plant Manager by blatantly disregarding the Plant Manager's instructions not to use the grievance meeting forum for public prayer or to advance his personal religious beliefs upon others. Lewis Banks was instructed on numerous occasions by management officials, including myself, not to disrupt the grievance meeting forum in this manner. He persisted in doing so and was given a written warning. In being disruptive and insubordinate, Lewis Banks violated standards of conduct expected of, and House Rules applying to, all Company employees; and

17. In conclusion, Lewis Banks was not discriminated against because of his race nor was he retaliated against for any reason, unlawful or otherwise.

Further, the Affiant sayeth not, this 20th day of June 2001.

" s/ *Jim Seel* "
Jim Seel

Sworn to and subscribed before me
This 20 day of June, 2001.

"s/ *James Allen* "
Notary Public

My Commission Expires: *10-14-2001* .

APPENDIX HH

SUPPLEMENTAL MEMORANDUM OF AGREEMENT
GREENSBORO FOLDING CARTON PLANT
CONTINGENT UPON RECOMMENDATION
BY AND BETWEEN

SMURFIT-STONE CONTAINER CORPORATION
GREENSBORO NORTH CAROLINA FOLDING CARTON
PLANT AND THE GRAPHICSS COMMUNCATIONS
INTERNATIONAL UNION, AFL-CIO,CLC

(OCTOBER 9, 1996)

II. CONTINUOUS RUN PROVISIONS

The provisions of the Collective Bargaining Agreement between the parties shall be deemed to be modified and amended SO FAR AS THEY ARE APPLICABLE TO EMPLOYEES ASSIGNED TO A SEVEN-DAY CONTINUOUS OPERATION, TO THE EXTENT THEY ARE INCONSISTENT WITH THE FOLLOWING

SECTION 1. This supplemental agreement shall cover all employees while assigned by the Company to a four tour continuous operation at the Company's Greensboro, North Carolina Folding Carton Plant.

SECTION 2. Tour Schedules, Its is understood and agreed that the affected departments will operate seven days per week and twenty-four hours per day, when it is determined by management. Under normal operating conditions, work which is performed on a continuous basis will be divided into tour periods consisting of twelve consecutive hours.

There shall be four tours of employees designated A, B, C, and D.

An example of a normal Tour Schedule (5/2 Schedule) is as follows:

WEEK	SHIFT	M	T	W	TH	F	SA	SU
ONE	DAYS	A	A	B	B	A	A	A
	NIGHT	C	C	D	D	C	C	C
TWO	DAYS	B	B	A	A	B	B	B
	NIGHT	D	D	C	C	D	D	D
THREE	DAYS	A	A	B	B	A	A	A
	NIGHT	C	C	D	D	C	C	C
FOUR	DAYS	B	B	A	A	B	B	B
	NIGHT	D	D	C	C	D	D	D

The Company reserves the right to modify or amend the schedule set forth herein as business may dictate.

SECTION 3. **The normal day tour period shall be 7:00 a.m. to 7:00 p.m., and the normal night tour shall be 7:00 p.m. to 7:00 a.m.**

APPENDIX II

Supporting Facts and Argument:
List

This is the list of Evidences that the Plaintiff will use in court. And the witnesses the Plaintiff Elder Lewis Banks will call for there testimony. All the evidences that the Plaintiff is using were submitted though the Plaintiff's Response Brief to Defendant's Memorandum Motion for Summary Judgment, dated August 20, 2001.

Ex.1A, 1a, p 2, ¶ 5
Ex.2B
Ex.3C
Ex 4D
Ex.5E
Ex.6F
Ex 7G
Ex 8H
Ex.9I
Ex.10J
Ex.11K
Ex.12L
Ex.13M, and audio tape
Ex.14N, page 77(20)-78(5)
Ex.14N, p. 78(18)-79(1)
Ex 14N, p. 66(24)-69
Ex.14N, p. 86(6)-(21)
Ex.15o, p. 370(2)-371(18)
Ex.15o, p. 372(3)-373(3)
Ex.16P
Ex.17Q
Ex.18R
Ex.20T
Ex.21U
Ex.22V
Ex. 38
Ex. 39
Ex. 40

Ex.23W
Ex.24X
Ex.25y, p.2, ¶ 32-¶ 44,
Ex.25y, p.4, ¶ 23-¶ 28
Ex.25y p.6, ¶16-¶53
Exhibit 26Z
Ex.28
Ex.29
Exhibit 30.
Ex. 31
Ex. 32, page 103(5), (6)
Ex. 33, p.252(6)-253(3)
Ex. 33, p.255(16)-258(12)
Ex. 35, p.3, ¶,5, & page 9, ¶, 25)
Ex. 35, p.6, #14, and p.7, #17
Ex. 35, p.12, #4.
Ex. 35, p.15, #6.
Ex. 36
Ex. 37

APPENDIX JJ

PREDETERMINATION CONFERENCE WITH RESPONDENT

Ja-Ethel Williams (Human Resources Manager)
(314-746-1248)
Date 5/24/99

Respondent was informed that the Commission has obtained records of the Arbitrator's Ruling and Proceedings in connection with CP's grievance and that this grievance was the same issues CP filed with EEOC. Based upon the factual findings and ruling of the Arbitrator, information indicates that CP was treated differently than two fellow white employees who committed the same offense in that CP was discharged and out of work for 1 ½ years before the ruling of reinstatement, while the white were suspended for two days, and the other for three weeks.
Bases on the information presented, the EEOC was recommending Cause on CP's discharge.

Ms. Williams was also informed that the record information obtained indicates that CP's discharge was due to retaliatory motives by Respondent due to CP's complaint of recial discrimination in connection with a white employee getting a job over him (CP) and other more senior Black employees.

Ms. Williams stated that she not surprised with the recommendation of the EEOC and that she would be submitting a brief in connection with the ruling of the Arbitrator.

Ms. Williams stated that the company abided with the ruling of the Arbitrator and reinstated CP without lost of seniority. Respondent will not offer any monetary (back wages) or other monetary remedy to CP in that is inappropriate.

" s/ P. Logan "
EEOC Investigator

APPENDIX KK

Arbitration Proceedings Transcript

CONJA WARE

BEING CROSS EXAMINATION
BY THE
UNION ATTORNEY
MICHAEL OKUN

Taken Wednesday, January 6, 1999

****

Beginning on page 247-268,
Discussion about the employees files like; Mary Ann Anderson, Tony Stanley, and Diana Cobbs, and how JS told Employment Security Commission that JS gave me a verbal written warning Jan. 15, 1998.

Also on page 255(16)-258(12),
Concerning the verbal warning that JS Stated that they gave the Plaintiff.

PAGE
256

[6]. **Q**. Is-it your understanding that the
[7]. Company's position ever was that Mr. Banks had
[8]. Received a verbal warning?
[9]. **A**. I understood that he was spoken to Thursday
[10]. Evening about the policy of staying over.
[11]. **Q**. Okay. As human resources is that a verbal
[12]. Warning?
[13]. **A**. I was never given anything in writing , if
[14]. That's what you were asking.
[15]. **THE ARBITRATOR**: The answer's no.
[16]. Isn't it?

[17]. **THE WITNESS**: Well I understand
[18]. It as being a verbal warning as they spoke to him
[19]. But I was never given anything in writing stating.
[20]. **BY MR. OKUN;**
[21]. **Q**. Aren't verbal warnings recorded? I mean, in
[22]. the progressive disciplinary thing when an employee
[23]. Is-
[24]. **A**. Well, in attendance, yes
[25]. **Q**. No. In other matters if somebody receives a

257

[1]. Verbal warning for performance isn't that recorded?
[2]. **A**. I suppose it is.
[3]. **Q**. And isn't a copy given to the union?
[4]. I believe that's policy.
[5]. **Q**. That's correct. Am I correct that at the
[6]. Unemployment hearing the Company's position to the
[7]. ESC was that he received a verbal warning?

APPENDIX LL

Supporting Facts and Argument:

Race Discrimination Disparate Treatment with Intent Comparative **or** Similarity

After the adverse action that was placed on the Plaintiff in Jan 1998. The Plaintiff filed with EEOC, in Feb. 4, 1998 an Affidavit **Ex. 6F.** And charging the Defendant with Race Discrimination and Retaliation, **Ex.29.** In that Affidavit states my claim that I filed in The U.S. District Court cases # 1:00cv00814. On page 3, 3rd ¶, Comparative Information and the names that were mention are Mrs. Mary Ann Anderson, and Tony Stanley both (whites). **Ex. 10J,** Mrs. Mary Ann Anderson files, **Ex. 11K**, Tony Stanley files, and **Ex. 12L**, Ms. Diane Cobbs (Black African American Woman) files of the write-ups that accrued That's when the Plaintiff Discrimination began. And in the same document 5th ¶, and where the Retaliation of the Plaintiff claim is the same.

To prove that Discrimination was a factor on April 15, 1999, the Arbitration Opinion and Award. **Ex 17Q.** On Dec. 8, 1999, EECO issue a Right to Sue with cause of Race Discrimination with Disparate Treatment with intent, **Ex. 31.** Right before EEOC made there decision of Race Discrimination,. The Defendant made a statement that the Plaintiff turned down an job offer after one month been terminated. **Ex. 18R**, is the investigation from the EEOC of that allegation.

Rule 103. Rulings on Evidence

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and see

EEOC COMPLIANCE MANUAL
NUMBER 915.003

DATE 5/20/98

This transmittal covers the issuance of Section 8 of the new Compliance Manual on "Retaliation". The section provides guidance and instructions for investigation and analyzing claims of retaliation under the statues enforced by the EEOC.

Document C, Opposition, p. 8-4 to 8-9
Document D, Retaliation, p.8-10 and Adverse Action, p.8-11 to 8-15